

Water Storage  
EQC Archives

S  
336.16  
F2far  
1992

A STUDY

The Feasibility of  
Assessing Recreational  
User Fees to  
Repay Water Storage  
Project Costs

STATE DOCUMENTS COLLECTION

2004 2002

MONTANA STATE LIBRARY  
1515 E. 6th AVE.  
HELENA, MONTANA 59620

PREPARED BY  
THE DEPARTMENT OF FISH, WILDLIFE AND PARKS

In Compliance with S.B. 313  
52nd Legislature

Draft to Water Policy Committee April 22, 1992  
Draft Accepted by Committee June 26, 1992  
Final Printed July 13, 1992

MONTANA STATE LIBRARY



**3 0864 0015 3779 7**



# Table of Contents

I. Executive Summary . . . . .	2
II. Introduction . . . . .	4
III. DNRC Reservoirs In This Study . . . . .	9
IV. Entrance Fees . . . . .	16
V. Water Development Stamp . . . . .	27
VI. Motorboat Fuel Tax Increase . . . . .	30
VII. Land and Water Conservation Stamp . . . . .	33
VIII. DFWP Taxes or Fees . . . . .	36
IX. End Notes . . . . .	43
X. Appendices . . . . .	47



# I. Executive Summary

The study considers options for charging recreational user fees at State Water Storage Projects...

In response to The 52nd Legislature's requirement in S.B. 313, the Department of Fish, Wildlife and Parks, in consultation with the Department of Natural Resources and Conservation has studied the feasibility of charging fees to recreational users of State Water Storage Projects.

The intent is that recreational users should pay a fair share of the maintenance of water storage facilities.

Five fee possibilities are considered in this report...

Five specific fee options are mentioned in S.B.313 and are evaluated in chapters bearing their names. This Executive Summary recaps the conclusions drawn as a result of this analysis.

The findings are based on three considerations...

This report is not intended to advocate for or against any options. Its purpose is to consider feasibility only. Its conclusions are based upon three factors: 1) Is the option legal? 2) Would it be profitable? and, 3) Would it be fair to payers?

Entrance Fees...

Although potentially the most fair of the options, charging of entrance fees is not feasible because it's not profitable at most sites and existing fees do not cover the cost of recreation management. There are also legal barriers at sites managed by federal agencies or improved using federal fish and wildlife funds.

Water Development Stamp...

This option, as a prerequisite for fishing and hunting licenses, is not feasible because it would violate federal funding and state assenting laws. It could be legally required of boaters, which would also be profitable. Whether it would be fair to boaters would depend on which other funding options might also be chosen.

Motorboat Fuel Tax Increase...

An increase in the share of the existing tax going to the motorboat account is very likely legal, profitable and fair. However, an about-to-be-released federally sponsored study must support an increase based upon consumption. Preliminary findings for Montana do not support an increase over the present 0.9% allocation to the State Park System.

Land and Water Conservation License...

This option is burdened with so many legal, fairness and profitability issues that it is not feasible.

Department of Fish, Wildlife and Parks Taxes or Fees...

Three sources of money could be used legally, fairly and profitably on a limited case-by-case basis. Their use would be strictly controlled by federal funding laws and state assenting laws. These sources are: 1) state fishing and hunting license revenues, 2) the Federal Aid in Sport Fish Restoration (D-J) Fund, and 3) the federal Land and Water Conservation Fund (LWCF).

All Fish, Wildlife and Parks funding sources are currently fully appropriated to current level services, some at state water storage projects. Additional redirection of existing funds to state water projects would reduce public services elsewhere. Depending upon the funding options selected, this could be a major problem for the already seriously underfunded State Park System.

## II. Introduction

The Study Mandate...

The 52nd Legislature, in 1991, mandated this study in S.B. 313, The Water Storage Policy Act.

S.B. 313  
The Water Storage  
Policy Act...

The bill's complete title describes its scope and puts this study in context.

"An act clarifying state water storage policy and the role of storage in solving water problems; establishing guidelines for setting priorities among new storage and rehabilitation storage projects; **requiring a study of the feasibility of assessing recreational user fees to repay water storage project costs** (emphasis added); requiring a study of the feasibility of collecting larger fees from consumptive water users who benefit from the development of new state-owned water storage projects or from the rehabilitation of existing state owned water storage projects; requiring a study of water storage laws and regulations by the water policy committee; creating a water storage state special revenue account; allocating additional tax revenues for water development; allocating 25% of the money available as grants in the water development state special revenue account and renewable resource development account to the development of water storage projects; eliminating the 10-year limit on project development plans required in applications for large water use permits; amending sections 85-1-604, 85-2-310, and 90-2-111, MCA; and providing an effective date."

Department of Fish,  
Wildlife and Parks to  
conduct study...

The bill, in Section 5, provides specific instructions. "Study of recreational user fees. (1) The department of fish, wildlife and parks, with the cooperation of the department of natural resources and conservation, shall conduct and coordinate a study that assesses the feasibility of charging recreational beneficiaries of water storage projects fees to assist in the repayment of a portion of those project costs associated with recreational opportunities."

The Montana Water Plan  
provides background...

The "Water Storage Section" of the Montana Water Plan says...

"It is clear that water storage has and will continue to solve many water resource problems in Montana. However, its applicability is limited by several factors, including the availability of water, technical feasibility, environmental impacts and funding.

Funding a major problem...

"The planning, construction, operation, maintenance and rehabilitation of water storage facilities is expensive. Water storage projects must often compete for scarce federal and state funds, and their priority must be determined in light of other water management activities." <sup>1</sup>

"Historically, federal and state governments helped initiate the development of water storage facilities by providing the necessary up-front funds for project planning and construction. Beneficiaries of the completed water storage projects then repaid, in the form of user fees, some or all of the costs attributable to such benefits, i.e., agriculture has generally repaid 10 to 100 percent on specific projects, while hydropower has generally paid 100 percent).

Recreational users do not share costs of state water projects...

Although many water storage projects provide fish, wildlife, recreation and other environmental benefits, as well as flood control and navigation benefits, these direct beneficiaries have had to pay little of the cost of these benefits (e.g., existing recreational user fees generally do not help pay for the costs of water storage facilities. Rather, these benefits have been paid for largely by the general tax payer."<sup>2</sup>

In its Policy Statement on financing, the plan says in part "...Although specific financing packages must be developed on a site-specific basis, all beneficiaries should be considered for a responsible role in repaying the cost of water storage projects."

The State Water Plan recommended study of five recreational fee possibilities...

Consequently, the plan included among its options for "Payment by Beneficiaries" the following recommendation:

"Conduct a study on the feasibility of having recreational beneficiaries repay a portion of the project costs associated with recreational opportunities. Among the options that might be assessed are:



a. A fee, on a site-specific basis, to individuals who take advantage of the recreational benefits associated with water storage projects funded with public resources. Like an entrance fee to a state or national park, the fee would be assessed each time a person participates in some recreational activity related to the water storage project. An annual user's pass would also be available for each site. The funds generated from the fee would be designated for water storage development that includes recreational or fish and wildlife benefits.

b. A "water development" stamp. This stamp would be required of anyone purchasing a fishing, duck hunting, boat, or other water-related license. The funds generated from this stamp would be designated for water storage development that includes recreational or fish and wildlife benefits. Such funds would have to be controlled in a manner consistent with state-federal requirements outlined in Section 87-1-701-714, MCA.

c. An increase in the Motorboat Fuels Tax to be used for water storage development that includes recreational or fish and wildlife benefits.

d. A generic "land and water conservation" license for anyone using public lands or water. At least some of the money generated from these licenses would be designated for water storage development that includes recreational, fish and wildlife, and/or environmental benefits. Such funds would have to be controlled in a manner consistent with state-federal requirements outlined in Section 87-1-701-714, MCA.

e. The Department of Fish, Wildlife and Parks providing appropriate funds on an individual project basis through agency funding mechanisms."

S.B. 313 study options...

The 1991 Legislature accepted the recommendations in the Water Storage Section of the State Water Plan. S.B. 313, Section 5 goes on to specify:

"Options to be assessed include but are not limited to:

"(a) requiring entrance fees for the recreational use of water storage facilities;

"(b) requiring purchase of a water development stamp as a prerequisite for purchase of a fishing, duck hunting, boating or other license for which water is an integral part of the recreational experience;

"(c) increasing the motor boat fuel tax

"(d) requiring purchase of a land and water conservation license by anyone using public lands or water; and

"(e) obtaining funding from the department of fish, wildlife and parks that is derived from taxes or fees on recreational activities."

**The deadline...**

S.B. 313 also required that the study be completed by July 1, 1992.

**Other fee options considered...**

The reader will find that the study considers various approaches to assessing fees or allocating revenues for options (a), (b), (c), and (e).

No completely different options are evaluated in this study because none were identified which appeared viable.

**Study methods...**

The study relied on existing data.<sup>3</sup> No field surveys or other methods of developing empirical information were employed. It was conducted by the Department of Fish Wildlife and Parks with the assistance of the Department of Natural Resources and Conservation. No outside consultants were employed. The legislature's Water Policy Committee provided oversight.<sup>4</sup>

**Findings limited...**

This report limits its findings to conclusions about the feasibility of each of the five options studied. They come down to the answers to three basic questions:

- (1) Is it legal?
- (2) Could it make money?
- (3) Would it be inherently fair?

This report does not make recommendations about which of the feasible options should be adopted, if any. It was felt that this is a policy matter which should be decided by others. The purpose of this study is to help make that decision.

It should be noted, however, that revenues from

existing funding sources are already fully appropriated to current public services, including services at state water storage projects. Unless revenues in those funding sources are increased, current services will have to be reduced elsewhere to redirect more funding to state water storage projects.

**Public involvement later if any options are considered for adoption...**

The study did not include public involvement. Public participation was not necessary to determine the feasibility (legality, profitability and fairness) of the options. As the author suggested to the Water Quality Committee on November 4, 1991, the appropriate time for public comment is when one or more of the options is considered for adoption. As a staff member of the Environmental Quality Council suggested, the ongoing State Water Plan process, where the options originated, might be the most appropriate venue.



### III. DNRC Reservoirs In This Study

See Table 1 for a detailed comparison of the 22 reservoirs in this study...

This study covers 22 Department of Natural Resources (DNRC) administered state water projects. Its purpose is to help identify ways to fairly distribute maintenance costs among consumptive and non-consumptive users of state owned irrigation projects. The underlying issue of fairly distributing costs between water users associations and recreationists arises as DNRC seeks to fund the repair of these aging projects.

The scope of this study is based upon the assumption that it should focus on DNRC irrigation projects where water user associations are being assessed for maintenance. Currently, recreationists are not sharing in the cost of dam maintenance at these projects.

Therefore, the study does not include other state owned projects such as those built and managed by the Department of Fish, Wildlife and Parks (DFWP) even though they, too, have immediate and extensive maintenance funding needs. See the end note for a list of these projects.<sup>5</sup>

The management of DFWP reservoirs is significantly different than DNRC water projects in terms of purpose (which is usually solely for recreation, fish and wildlife), financing (where costs are now borne entirely by recreationists' fees and are not normally supported by irrigation fees), and administration (which does not normally include water users associations).

The subject DNRC water projects are widely distributed throughout the state and range in size from 28 acres (Fred Burr) to 3497 acres (Tongue River).

Table 1 (and the accompanying notes referenced at various places in the table by superscript number) provides project location, size, drawdown, recreation manager (if any), recreational facilities (if any), type of fees (if any), as well as the level of recreational use, fish management (if any) and motor-boating use (if any).

See Table 2 for 7 projects with recreation management but no fees...

Recreation is managed at 13 projects with facilities ranging from toilets and shelters only to developed boating, camping and picnicking facilities. Services range from periodic maintenance of toilets to resident seasonal caretakers.

The cost of field maintenance, exclusive of central office administrative overhead, ranges from a high of \$83,000 at Cooney for full services to a low of \$1,220 at Bair and Sutherlin where latrines are serviced periodically by contract.

Recreation management is usually provided by agencies other than DNRC which provides such management at only 2 projects. Of the other 11 where recreation is managed, DFWP has 8, the United States Forest Service (USFS) has 2, and the Bureau of Land Management (BLM) has 1. Recreational user fees are already charged at 6 study areas; 5 by DFWP and one by USFS through a concession operator.

See Table 3 for 6 projects where recreational user fees are already collected...

The operating budgets and funding sources, fee types, amounts and revenues and personnel levels, measured in full-time-equivalents (FTEs), are found in Tables 2 and 3.

The level of use has determined where recreation is managed...

There are no recreational facilities or management at the other 9 projects in this study. Of these non-managed reservoirs, Ruby Reservoir receives the highest annual estimated use at 3300 fishing days, an average of 9 people per day.

Fish are planted at most projects...

Table 1 identifies the 16 reservoirs where DFWP fish stocking took place in 1991.

## DNRC RESERVOIRS INCLUDED IN THIS STUDY

Table 1.

Reservoir Name	Drainage /County	Surface Acres <sup>1</sup>	Drawdown Impacts, if any <sup>2</sup>	Recreation Management Agency <sup>3</sup>	Recreation Facilities	Rec. User Fees	User Days-Annual <sup>4</sup>	Fish Stocked DFWP <sup>5</sup>	Motor Boat Use
Ackley	Judith/ Judith Basin	250	Occasionally Significant <sup>6</sup>	Fish, Wildlife and Parks	Boat Ramp, Camp, Picnic	Day, Camp	20,000-R 5,000-F	Yes	Yes
Bair (Durand)	N. Fork Musselshell /Meagher	292	Occasionally Severe <sup>7</sup>	Natural Resources and Conservation	Boat Ramp, Toilets, Shelters	None	? -R 1,000-F	Yes	Yes
Broadwater (Toston)	Missouri /Broadwater	(River Channel)	None	US Bureau of Land Management	Boat Ramp, Camp, Picnic	None	1,500-R <sup>8</sup> 500-F	No	Yes
Cataract	Cataract /Madison	45	Not Significant	None	None	None	? -R 400-F	No	No
Cooney	Red Lodge /Carbon	790	Commonly Significant <sup>9</sup>	Fish, Wildlife and Parks	Boat Ramps, Camp, Picnic	Day, Camp	131,000-R 24,000-F	Yes	Yes
Cottonwood	Shields/Park	175	Commonly Significant <sup>10</sup>	None	None	None	? R 150-F	No	Very Limited
Deadman's Basin	Musselshell/Golden Valley & Wheatland	2,000	Commonly Severe <sup>11</sup>	Fish, Wildlife and Parks	Boat Ramps, Camp, Picnic	None <sup>12</sup>	21,000-R 14,000-F	Yes	Yes
East Fork (Flint Creek)	E. Fk Rock Cr./Granite	420	Commonly Severe <sup>13</sup>	US Forest Service	Camp	None	8,000 R 3,600 F	Yes	Yes
Fred Burr	Fred Burr Cr. /Ravalli <sup>14</sup>	28	Commonly Severe <sup>15</sup>	None	None	None	? R ? F	No	Very Limited
Frenchman	Frenchman Cr. /Phillips	806	Commonly Severe <sup>16</sup>	None	None	None	? R ? -F <sup>17</sup>	No	Very Limited
Glacier Lake	Rock Cr. /Carbon	166	None known <sup>18</sup>	None <sup>19</sup>	None <sup>20</sup>	None	? -R 1,100 F	Yes	No <sup>21</sup>
Martindale	S. Fk. Musselshell /Wheatland	1,050	Occasionally Severe <sup>22</sup>	Fish, Wildlife and Parks	Boat Ramp, Camp, Picnic	None	28,000 R 11,000 F	Yes	Yes
Middle Creek (Hyalite)	Middle Creek /Gallatin	212	Commonly Significant <sup>23</sup>	US Forest Service <sup>24</sup>	Boat Ramp, Camp, Picnic	Camp <sup>25</sup>	7,900 R 4,400 F	Yes	Yes <sup>26</sup>
Nevada Creek	Nevada Creek /Powell	375	Commonly Severe <sup>27</sup>	None	None	None	? R 1,700-F	Yes	Yes
Nolan	Smith & Ford Creeks/Lewis & Clark	535	Occasionally Severe <sup>28</sup>	Fish, Wildlife and Parks	Boat Ramp, Picnic, Camp	None	7,800-R 8,900 F	Yes	Yes
N. Pl. Smith (Sutherland)	Smith River /Meagher	335	Commonly Severe <sup>29</sup>	Natural Resources and Conservation	Toilets, Shelters	None	? -R 3,500 F	Yes	Yes
Painted Rocks	N. Fork Ritzroot R. /Ravalli	655	Commonly Severe <sup>30</sup>	Fish, Wildlife and Parks/US Forest Service	Boat Ramps, Picnic, Camp	Day, Camp <sup>31</sup>	10,000 R <sup>32</sup> 1,500 F	No	Yes
Petrolia	Flatwillow Cr. /Petroleum	515	Commonly Significant <sup>33</sup>	None	None	None	? R 1,400 F	Yes	Yes
Ruby River	Ruby River /Madison	970	Commonly Severe <sup>34</sup>	None	None	None	? -R 3,300-F	Yes	Limited
Tongue River	Tongue River /Big Horn	3,497	Moderately Significant <sup>35</sup>	Fish, Wildlife and Parks	Rt. Ramp, Marina, Picnic, Camp	Day, Camp	30,000 R 12,000 F	Yes	Yes
Willow Creek (Harrison)	Willow Creek /Madison	890	Moderately Significant <sup>36</sup>	Fish, Wildlife and Parks	Boat Ramp, Picnic, Camp	Camp	14,500 R 9,400 F	Yes	Yes
Yellow Water	Yellow Water Cr./Petroleum	473 <sup>37</sup>	Occasionally Severe <sup>38</sup>	None	None	None	? R 1,600 F	Yes	Very Limited

**RESERVOIRS WHERE USER FEES ARE CHARGED**

**Table 2.**

Reservoir Name Managing Agency	Fee Type /Amount	Fee Revenue in 1991 <sup>39</sup>	Operating Budget <sup>40</sup>	Funding Sources	FTE <sup>41</sup>
Ackley Fish, Wildlife and Parks	Day Use \$3/Vehicle or \$.50/Person or \$15 Annual /Vehicle Camping \$8/Night /Unit	\$ 5,693  (Entrance fees = \$3,287 or 59% of earnings)	\$15,160	Fees  Boat Gas Tax <sup>42</sup>	0.43
Cooney <sup>43</sup> Fish, Wildlife and Parks	Day use Same Camping \$7/Night	\$36,386  (Entrance fee = \$22,900 or 62% of total)	\$83,000	Fees  Boat Gas Tax	2.55
Painted Rocks Fish, Wildlife and Parks <sup>44</sup>	Day Use Same Camping \$8/Night	\$ 1,213	\$ 9,929 <sup>45</sup>	Fees  Parks Coal Tax <sup>46</sup>	0.35
Tongue River Fish, Wildlife and Parks	Day Use Same Camping \$7/Night	\$30,769  (Entrance fees = \$12,684 or 41% of total)	\$28,976 <sup>47</sup>	Fees  Boat Gas Tax	0.96
Willow Creek (Harrison) Fish, Wildlife and Parks	Camping \$4/Night	\$ 1,670	\$ 3,550	Fishing License	0.21
Middle Creek (Hyalite) US Forest Service	Camping \$7/Night (Concession)	\$36,000 <sup>48</sup> (Concession)	\$ 6,000 to \$8,000	Congress <sup>49</sup>	1.00

**RESERVOIRS WHERE RECREATION IS MANAGED BUT FEES ARE NOT CHARGED**

**Table 3.**

Reservoir Name	Recreation Management Agency	Operating Budget <sup>50</sup>	Source of Funds	FTEs
Beir	Natural Resources and Conservation	\$ 1,220	Water Development Fund <sup>51</sup>	Contract
Broadwater (Toston)	US Bureau of Land Management	\$ 2,000	Congress	0.15
Deadman's Ranch <sup>52</sup>	Fish, Wildlife and Parks	\$18,685	Earned Revenue Boat Gas Tax	0.63
East Fork (Flint Creek)	US Forest Service	\$ 1,200	Congress	0.05
Martinsdale	Fish, Wildlife and Parks	\$ 3,500	Fishing License	0.11
Niles	Fish, Wildlife and Parks	\$ 3,500	Fishing License	0.11
N. Fl. Smith (Sutherland)	Natural Resources and Conservation	\$ 1,220	Water Development Fund	Contract



## EXPLANATORY NOTES FOR PREVIOUS TABLES

1. Estimate at full pool.

2. All can be drawn down to "dead pool" level except Middle Creek Reservoir which has a 44 feet deep minimum operating level. Impacts listed in this column refer to drawdown effects which are significant enough to inhibit recreational use, particularly boating, or harms the fishery. Fishing and boating are typically the most important recreational activities, although a number of others such as camping, picnicking, swimming and waterfowl hunting in season may also take place.

3. DNRC is the managing agency for all of the dams in the study. The agencies named in this column provide management of one or more specific recreation sites on the reservoirs. The recreation management agencies do not control the water levels.

4. The "R" denotes general site visitation in recreation days per year from the "1986 Montana State Parks Visitation Report" (the most recent available), unless otherwise specified. This information predates the charging of entrance fees. It was based upon periodic traffic counts which could not filter out casual traffic. Actual current use, especially at fee sites, is probably much lower, but cannot be compared to former data because statewide data is not longer tabulated due to budget constraints.

The "F" denotes fishing use of the reservoir, not from a particular site, and is from the "Department of Fish, Wildlife and Parks Angling Use Estimates." The figure represents the average of the annual fishing pressure in fisherman days from the information available for years 1982 through 1989.

Where used together, "R" and "F" use are not necessarily additive.

5. Reflects the stocking record for 1991. Stocking locations vary from year to year. Stocking is done because reservoirs do not provide habitat conditions necessary for natural reproduction.

6. The Department of Fish, Wildlife and Parks purchases stored water to maintain a minimum recreation pool and a stable sport fishery. However, drawdown can still be significant enough in dry years to adversely effect the fishery due to reduction in space. Boating recreation is also limited during occasional heavy drawdown.

7. Occasional heavy drawdown in dry years can severely limit fish populations due to space reduction. Boating is also limited during dry years due to loss of surface area and more difficult access to the water. The reservoir was completely drained in 1988 because of drought.

8. BLM best guess @ 4 cars/day, May through September. Assume 2.5 people per car.

9. Drawdown to capture spring runoff and again in late summer after the irrigation season is significant enough to limit the fish population due to spawning problems and crowding. Annual dam inspections dry Rock Creek which kills fish in the dewatered stream segment. Drawdown which limits boat access is common.

10. The reservoir is commonly lowered enough to limit both fish populations and recreation. It is occasionally completely drained.

11. Fishery has recently been poor due to typically low operating levels, but even in normal years the drawdown is great enough to limit fish populations due to crowding and loss of fish down the outlet ditch. It has been very difficult to maintain a suitable boat ramp and boating is hampered low operating levels. Occasionally, the reservoir is filled to a level that floods commonly used picnic sites.

12. Deadman's Basin was formerly a fee site but fees were dropped because users complained about lake levels, conditions of ramps, roads, recreational facilities and service.

13. Usually drawn down to dead pool by midsummer. Fish population is limited by crowding. All boating but slow trolling is precluded due to restricted area, exposed stumps and loss of aesthetic values.

14. Fred Rurr is the only reservoir in this study not shown on the state highway map. It is located Northwest of Hamilton just outside of the Selway Bitterroot Wilderness. It would be in the wilderness if the Baucus bill is passed.

15. Drawdown shrinks the pool volume to the point that the loss of space severely limits the fish population.

16. The reservoir is heavily silted and shallow. Annual drawdown is commonly severe and limits fish populations through loss of space and winter kill.

17. Very poor fishery and no department fishery program because reservoir is shallow.

18. Lake is so remote that fishing pressure is low. Lake must be stocked to maintain fishery.

19. On USFS land with dam permitted to DNRC.

20. Glacier Lake and dam are partly in Wyoming. Lake (but not dam) is within the Absaroka Beartooth Wilderness. It is 1 3/4 miles to the nearest useable road. 4X4 trail allows dam maintenance. Even USFS horse trail has been closed due to its severe condition. Terrain is too severe to accommodate even a campground.

21. Access is not feasible and the lake (but not the dam) is within the Absaroka Beartooth Wilderness which prohibits power boating.

22. Drawdown during dry years causes severe impacts to fish populations due to reduction in space. Boating is also impacted due to limited surface area, hazards protruding to the surface and difficulty of access.
23. Minimum operating level of 44 feet still allows significant drawdown which can make it difficult to launch boats, spoils visual setting and makes it more difficult to fish. The effect on the fish population has not been studied.
24. Two US Forest Service camp grounds on federal land, picnic area at dam on DNRC land.
25. Camp grounds run by a concessionaire under contract to USFS. Camp fee is \$7/night.
26. Limited to "No Wake" speed.
27. Drawdown shrinks pool volume to the point that loss of space severely limits fish populations.
28. Drawdown in dry years is to dead storage level. Concentration of fish during these periods impacts populations because of competition for food and also competition for space with the high sucker population. Winter kill is a problem during low water. Boating is almost eliminated during drought periods.
29. Annual drawdown prevents a stable fishery from developing. Drawdown in dry years can have severe impacts on fish populations due to reduction in space. Boating use, though always limited because the lake is very shallow, is made even more difficult and less desirable.
30. Annual drawdown severely limits late summer recreation and boat access. Boating hazards, such as tree stumps protruding from the water, become a significant problem. Annual drawdown also significantly shrinks pool volume and the lack of space limits fish populations. The Department of Fish, Wildlife and Parks annually purchases 10,000 acre feet of water and owns 5,000 acre feet to insure instream flows downstream in the Bitterroot River.
31. Fees are charged at Department of Fish, Wildlife and Parks site but not at the US Forest Service site even though sites and facilities are similar.
32. DFWP site was estimated to have received 4900 visitor days in 1985, the last year this information was collected. The USFS site visitation was estimated to be 1900 visitor days 1991. Say 6,800 visitor days per year, typical.
33. Annual drawdown limits the forage base and hence the quality of the fishery is rated as only fair. Heavy drawdown to dead storage during dry years severely impacts fish populations due to reduction in space. Boating is commonly limited by reduced surface area and more difficult access. It is eliminated in dry years.
34. Typical annual drawdown is 50 feet which reduces the pool by 75% or more. Space reduction significantly limits fish populations. Mud flats cause access problems for bank fishermen and boaters.
35. Lower operating level caused by unsafe condition of the spillway effects fish populations and recreational access. Drawdown amplifies the problem. Occasionally very low fall-winter pool has also caused fish winter kill.
36. During annual drawdown surface area is reduced to 1/2 of full pool which limits boating and access to water is more difficult. Fish populations are moderately effected by space limits during drawdown.
37. Department of Fish, Wildlife and Parks Fisheries Division currently lists the surface area as 150 acres due to siltation.
38. Heavy drawdown during dry years can severely impact fish populations due to limited space and winter kill. Boating, which is already very limited by the shallow water, is even more restricted.
39. On site fee revenue consists of sale of entrance tickets, seasonal passports, overnight camping tickets, half price camping tickets for Montana seniors and disabled, surcharges collected from those who did not use self service, miscellaneous group fees, etc. It is not possible to determine how many visitors used park passports purchased elsewhere or how long they stayed. It is known how many daily entrance tickets and overnight tickets are sold at each site. For purposes of this study, the percent of sales of entrance tickets compared to all other types of tickets has been determined for each site. This is a useful estimate since one of the options being studied is adding a "state water storage project surcharge to existing entrance fees.
40. These amounts include only "on the ground" day-to-day operating expenses. They do not include capital construction needs, capital cost amortization, life cycle maintenance or administrative overhead. In some cases the figures given are estimates because the operating budgets are included with other sites in an administrative region, or in the case of Middle Creek is managed by a concessionaire.
41. 1.00 FTE (full time equivalent) equals 2080 working hours or one year. One week, 40 hours equals about 0.02 FTE.
42. Section 60-3-201 MCA credits 9/10 of 1% of the gasoline dealer's license tax "...to the state park account...used only for the creation, improvement and maintenance of state parks where motorboating is allowed..."
43. The Federal Aid in Sport Fish Restoration Fund (Dingell-Johnson) was used to install some of the boating facilities. Federal regulations require that all earnings from the project be used to maintain these facilities or be returned to the federal fund as "program income."
44. USFS operates a small campground and boat access near the dam where no fees are charged.

45. The O&M budget for the two USFS sites near the dam is approximately \$1250/year and 0.05 FTEs (based on 3+ hours /week for 20+ weeks @ \$8/hour plus operations support @ 50% of personal services costs).
46. Section 15-35-108 allocates 1.26% (of the total) State Coal Severance Tax "...to a nonexpendable trust fund for the purpose of parks acquisition or management...of sites and areas described in 23-1-102."
47. Tongue River Reservoir is about 20 miles from Sheridan, Wyoming, whose residents use it heavily. There is relatively little site control and few recreational facilities to serve recreationists, but the area is served by a small private marina concessionaire. These conditions account for the unusually high fee earnings compared to the DFWP maintenance costs.
48. The very favorable ratio of concessionaire's gross earnings to the USFS operating budget of \$6,000 to \$8,000 is attributable to the unique situation at Middle Creek Reservoir. It is located in the very popular and heavily used Hyalite Canyon near Bozeman. The campground serves not only recreationists who use the lake but also those who recreate on the National Forest in this very scenic area.
49. National Forest Recreation Funds.
50. Based on estimates which include only "on-the-ground" day to day operating costs. Estimates do not include capital amortization, life cycle maintenance or administrative overhead costs.
51. Established in section 85-1-603 MCA, using a portion of the state coal severance tax as the primary funding source.
52. Fees were formerly charged at Deadman's Basin but were discontinued. Users complained about lake levels, condition of ramps, roads and recreational facilities and services.



## IV. Entrance Fees

Entrance Fees can be an effective strategy...

Assessing entrance fees is a very direct way of charging the direct beneficiaries at site and if well administered can be made fair and well accepted by users. This "user pays" concept is being more universally applied in recreation management as more traditional sources of funding are found to be inadequate or are withdrawn.

Entrance Fees are charged at some state water projects now...

Entrance and/or camping fees are already charged at six of the twenty two projects in this study. See Table 2.

At most projects no fees are presently being charged...

No fees are charged at seven other projects where agencies are providing at least some recreational management and have budgeted money and personnel. See Table 3.

And, of course no fees are charged at the remaining nine projects which have no recreation management.

It should be noted that fish management, including annual stocking, takes place at about 14 projects, including the nine where no entrance fees are charged. Fishing license revenues and Federal Aid in Sport Fish Restoration (D-J) matching funds support fish management activities.

The feasibility of on-site fee collection is largely a function of use levels...

Tight recreation budgets and the growing public acceptance of user fees have over the past decade, at least, caused recreation managers to charge user fees where earnings exceed the collection costs.

But also depends upon several other factors...

The Department of Fish, Wildlife and Parks has discretionary authority to charge user fees at any of the sites it manages. In the more than two decades it has charged fees, the list of fee areas has changed in response to cuts in other funding sources, increased use levels, public acceptance, condition of facilities and cost of collection. Collection methods have constantly been modified through experience.

Fairness has also been an important factor. For example entrance fees are not now charged at

fishing access sites because fishing license funds bought, developed and manage them.

**DNRC does not charge recreational user fees...**

DNRC, at its popular reservoirs, has turned over recreational management to other agencies. Use at the balance of its projects has not required a management presence and the administrative structure to administer a fee system has not been developed.

**Federal agencies have little fee collection flexibility...**

Federal agencies have less discretion than DFWP possesses. Congress has specified, by name, at which areas entrance fees may be charged. Congress has also established facility criteria and standards which federal agencies must use to determine at which areas user fees, such as overnight camping, may be assessed. This will be discussed in more detail later in this chapter.

**Flexibility is also limited where Federal D-J dollars have funded recreational improvements...**

Entrance fees, or any other earnings, at sites where Federal Aid in Sport Fish Restoration Funds (D-J) have been used for improvements must be used on-site for operations and maintenance of those facilities or returned to the federal fund as program income. These revenues cannot be used for dam maintenance. This is the case at Cooney Reservoir, for example.

**Fee aren't charged where at least collection costs cannot be recovered...**

However, regardless of other considerations, fees aren't charged where it costs more to collect them than they earn...a matter largely a function of use levels.

Users have paid fees at Cooney Reservoir since 1969. Why? A major reason is that use levels are high. This makes it possible for earnings to exceed collection costs. (This should not be confused with the total cost of providing facilities and services which normally cost far more than user fee revenues at these projects.)

**How much use is needed to make fees feasible?..**

What is the low end of the spectrum, based upon experience? Middle Creek (Hyalite) managed by the USFS through a private operator receives an estimated 8,000 recreation visitor days annually. The visitation at Painted Rocks managed by DFWP and USFS is about 7,000 visitor days annually. Fees are now charged at these sites. There are no fees now being charged at reservoirs in this study which have lower visitation.

**Calculating the "break**

There obviously is no point in collecting fees if

even" point...

the costs exceed the earnings. To calculate a break even point it is necessary to make a few assumptions.

First, set a fair price...

Recreationists accept user fees if the money is used for related management purposes and if the charge is considered fair.

For purposes of this study, the assumed upper limit for a new user fee is \$3/vehicle/day or \$0.50/person/day which is the current State Park System fee for day use of developed areas. DFWP has determined that this charge is at or above the rates charged in neighboring states for similar quality facilities and service.

A higher charge would likely result in buyer resistance sufficient to reduce gross income and create serious public relations problems.

A charge of \$1/vehicle/day is assumed for use of projects which offer no recreational facilities or services.

Choose a collection method...

There are a number of ways to collect fees. Choosing the right one is at least as important as setting the price. The most important factors are; 1) the cost of collection and, 2) the user compliance rate. Other management considerations such as the need to control use, make personal contact with users, provide maintenance and security can also play an important part of the decision.

The cheapest on-site collection method is the honor system. Users are required to stop at the entrance and deposit the fee in an envelope on which they write their name, address, vehicle license and date. The envelope goes in a sturdy receptacle and a receipt goes on the vehicle dash. Every few days an employee collects the money for bank deposit.

The honor system doesn't work...

Past experience in the State Park System and elsewhere shows that collections relying wholly on the honor system have compliance rates of only 10% to 20%. This basic unfairness creates much ill will among users who do pay. Because management has virtually no public contact, users do not understand, and therefore do not support, the user fees. Vandalism and theft rates are highest using this method.

**A staffed gate is too expensive...**

The most effective way to overcome shortcomings of the honor system is to use a staffed entrance station. Compliance is 100%, so fairness is not an issue. The attendant can explain the need for the fee, answer questions and at slack times do maintenance work.

Unfortunately, a staffed gate costs too much at low use sites or those with more than one entrance. Even at Cooney Reservoir, the most heavily used project in this study, DFWP cannot afford this method.

**Self service coupled with compliance checks is the best choice...**

The self service method uses the same collection devices as the honor system and adds a "park ranger" who periodically goes through the area to check compliance. Ideally, this person has authority to cite violators. Compliance goes up to the 50% to 75% range depending upon how often patrols are made. Even limited public contact is very helpful in developing acceptance of the fees. Vandalism decreases and some maintenance can also be performed by this person.

**What does it cost?..**

**Construction is at least \$3,000 to \$5,000 per entrance...**

Self service stations must be installed at every entrance. They consist of road and parking area preparation, fencing, barriers, signs, preferably a security/courtesy light, ticket dispenser and a secure vault. The cost, per entrance, is typically \$3,000 to \$5,000 but can be much more.

**Compliance personnel cost at least \$13,000 per year per reservoir...**

Assume that May through September one attendant will be present at each fee reservoir 8 hours per day on weekends and holidays, as well as part of a day on Wednesdays and Fridays to collect the money and to be sure that the self service station is supplied with tickets, repair any damage, collect the money and clean up the site. Say 520 hours.

Assume that October through April the attendant averages 16 hours per week to perform the same service on a reduced schedule. Say 480 hours, or 0.5 FTE per year.

Fee and compliance people in DFWP are classified at least at grade 7 with a minimum salary of \$6.85 with benefits adding about 20% more. The annual cost for 0.5 FTE equals \$8550.

Operations support for vehicle, per diem, clothing, maintenance supplies, tickets, repairs



and replacements typically equal about one half the personnel costs, say \$4,275 per year.

It will cost at least \$3,000 to \$5,000 per entrance for capital improvements, and about \$13,000 annually just for field costs to run a self service system.

The administrative costs of designing and setting up the system, accounting, auditing, supervision and other overhead are not being included for simplicity. This would cost at least 15-20% of the revenue collected and require additional staff support.

**Where's the break even point?..**

How many people must use a project each year to pay the fees necessary to just pay the collection costs? Additional assumptions must be made to make this estimate.

First assume the higher fee rate of \$3/vehicle/day. This might be acceptable at the 7 sites which have some facilities and service but where fees are not now assessed. The rate is probably unacceptably high at the 9 projects which have no facilities or maintenance.

Recreation vehicles typically bring 2 to 3 people to recreation sites. The estimate is based on two people/vehicle, the one which would generate the more revenue.

Only 50% to 75% of the users will actually pay. Compliance as based on a number of factors, as previously discussed. This estimated will assume it to be 75%.

The annual collection cost is estimated to be \$13,000/year. To this add the capital cost, using the minimum price of \$3,000 amortized over a ten year life which equals \$300/year. Fees must bring in at least \$13,300/year to break even.

**Use must be 12,000 recreationists per year to break even charging entrance fees...**

To break even using these assumption requires an annual visitation of 11,822 recreation visits. (\$13,300 divided by \$3/vehicle times 2 people/vehicle divided by 75% compliance)

**But, even this estimate has exceptions...**

It can be seen in table 3 that among the projects where fees are not now charged, only Deadman's Basin, at 21,000 visitors, exceeds this level. DFWP used to charge both camping and entrance fees

at Deadman's Basin.

The fees were dropped because poor fishing and boat access caused by low water, the lack of drinking water and the poor condition of the camping and picnicking facilities made paying fees unacceptable to users. It is interesting to note, in Table 3, that Deadman's Basin's current operating budget is \$18,685 and 0.63 FTE to provide site maintenance. Some of this is recovered from cabin site leases.

There are two projects, Middle Creek (USFS) and Painted Rocks (DFWP and USFS), where fees are currently charged which have budgets lower than \$13,300 (Table 2) and visitation less than 12,000 (Table 1).

At Middle Creek the visitation is 7,900. Maintenance costs are \$6,000 to \$8,000, but in this case fees are collected by a concessionaire. He charges only for overnight camping in a developed campground and grosses \$36,000 at \$7/night. Being located in the heavily used Hyalite Canyon near Bozeman, the Middle Creek situation is not typical and likely could not be replicated at other projects for a number of reasons.

DFWP has tried to attract a concessionaire to Cooney, the most heavily used project at 131,000 visits, and has not been successful because of project competition and other factors make it a marginal venture, at best.

Painted Rocks is another special case. There are two developed areas, one operated by the USFS where no fees are charged, and the other by DFWP where both day use and camping fees are charged during the summer. The project is snow bound in winter.

The USFS site is near the dam and has more reliable boating facilities but its campground is not on the lake. The DFWP site is farther up a gravel road and although the campground is on the lake, it and the boat ramp are left "high and Dry" by drawdown by midsummer. Both receive budgeted maintenance, USFS at \$1250 and 0.05 FTEs and DFWP at \$9,929 and 0.35 FTEs. The USFS site does not meet its fee criteria. DFWP's fee criteria are met at its site and it grosses \$1,213. Compliance

is largely on the honor system.

DFWP is willing to "operate at a loss" because it provides caretaker services for the facilities anyway and anything it can earn on the honor system helps. It also plans to hire a region wide park ranger to improve compliance at several sites and hopes that the planned paving of the county road and future improvements to park facilities will increase use.

**It is not feasible to charge entrance fees at the 9 projects which presently have no on-site recreational management...**

Nine projects have no recreational management presence because the use is so low that none is required. The recreational resources at the nine projects are not of a quality that has attracted much use. This makes the charging of entrance fees not only economically infeasible but also very likely unacceptable to the few people that do use them.

At the other 13 projects where recreational resources are better, use is higher and management presence has grown in proportion to public needs.

At some, public health considerations prompted the building of toilets which must be maintained. At others, good fishing created the need for reliable boat ramps, roads were improved and uncontrolled vehicle use brought controlled parking areas. At the most popular, family outings brought a demand for swimming areas and campgrounds with tables and drinking water. Fire protection necessitated grills and overcrowded holidays required law enforcement.

At the six projects where management demands were greatest and heavy use made it feasible, user fees supplanted diminishing general tax support.

**What about adding a water project surcharge to the fees already collected at six projects?..**

There is a fee management system in place at six projects. In adding a surcharge there would be complications to overcome which would have to be balanced against the anticipated revenue. Would it be worth the trouble?

A surcharge could not be mandated for federally managed sites (Middle Creek), and revenue from sites using federal D-J funds for development (Cooney) could not be used for dam maintenance as previously explained.

Presently at four sites (Ackley, Cooney, Painted

Rocks and Tongue River), DFWP charges \$3/vehicle/day for entrance plus \$4-5 per night for camping. In total, it earns about \$74,000. (See Table 2). It honors the \$15 annual State Park Passport for entrance. If a surcharge were added, people who have the passport would still have to buy a "water project entrance ticket."

Park users buy the annual passport as much for convenience as cost savings. On a statewide basis, gate receipts for entrance are only about 39% of total entrance fee collections.<sup>6</sup> The rest of the entrance revenue comes from annual passports at full \$15 price, "early bird" passports at \$12, and 1/2 price sales for licensing additional vehicles owned by one person.

Adding a daily entrance surcharge at state water storage projects would cause significant problems for the rest of the state park system through confusion and probable reduced sales of annual passports because they were not honored at all DFWP administered sites. It would also add administrative overhead costs.

**Buyer resistance  
becomes an issue...**

Buyer resistance is reflected in both reduced visitation and reduced compliance rates and can also trigger significant public relations problems both on-site, causing problems for attendants, and off site through news media and complaints to agency offices and elected officials. Increased vandalism is also sometimes noted.

Experience shows that there would be significant buyer resistance based on at least three public attitudes; 1) people don't like complicated fee systems and many buy the annual passport as much for convenience as cost savings, 2) when a new charge is added they expect new or improved service when, in this case, nothing apparent would have changed, and 3) the common feeling of many users will be that they've already paid for water projects through general taxation.

These difficulties may be overcome in time with a public relations effort, both in the media and on the site. Initially however, due to buyer resistance, use can be expected to go down about 25% and take 3 years to recover. This estimate is based upon past experience in state parks in Montana and elsewhere but cannot be precisely predicted.

The level of current fees and their acceptance, the amount of the new fees and their acceptance are two obvious factors. The quality of the recreation, particularly the boating and fishing, the quality of the access and facilities, the state of the economy, the interval since the last fee increase (for whatever purpose) and the availability of alternative recreation sites not imposing the fee will also be factors which bear on the actual of buyer resistance.

**Existing user fee revenue will go down...**

Revenue from the four sites (Ackley, Cooney, Painted Rocks and Tongue River) is about \$74,000. It costs about \$137,000 to manage them using fees and other funding sources. A 25% or more drop in existing revenue (\$18,500+), due to buyer resistance, would have to be accommodated in some way. It could be made up at the expense of other parks, the legislature could appropriate other funds or service would have to be cut. If service is cut, buyer resistance intensifies and revenues drop even further.

Estimating the income which could be gained from a water project surcharge is difficult. The Department of Fish, Wildlife and Parks does not have the user data which shows how many visitors use the annual park passport at a particular site or how many days they stay. However, setting aside the income from annual passports, senior citizen passes, etc., DFWP earns about \$39,000/year from \$3/vehicle/day entrance fees. This means at least 13,000 sold.

The surcharge would have to be at least \$1.50 to make up for loss of \$18,500 from existing DFWP earnings due to a 25% buyer resistance (existing earnings = \$74,000 for entrance and camping). The new earnings, initially, would be only around \$20,000 per year.

This \$20,000 would have to also cover publicity, signs, tickets, extra enforcement, administrative and auditing expenses. Only camping fees are charged at Willow Creek and Middle Creek. All of the administrative expenses of adding an entrance structure would be necessary at these existing fee areas.

**Net profit from a surcharge would be very small, at best...**

Increasing the surcharge to three dollars would mean that it would cost up to \$14 per night to camp at a state water storage project presently

administered as a fee site by DFWP. This would be high enough to substantially increase buyer resistance and could make the buyer resistance permanent rather than temporary.

**Could existing DFWP fee revenue be shared with DNRC?..**

The option of not adding a surcharge, but simply diverting part of the existing earnings to a dam maintenance account is not much, if any, better. Either existing recreational services would be cut, causing buyer resistance or the revenue would have to be made up from another source, which only transfers the problem.

**State Parks are seriously underfunded, too...**

Fee earnings currently cover only a small percentage of existing costs of managing the State Park System which includes parks at state water storage projects. All state parks are seriously underfunded. Diverting any existing State Parks fee revenue would compound the problem.

**Federal agency recreation managers cannot be bound by state fee requirements...**

The State of Montana does not have the authority to mandate that the U.S. Forest Service or the BLM charge or collect fees for recreational users of state water projects which they manage.

To cite an example, the state could not require the USFS to collect from users and remit to the state the 4% state bed tax on forest cabin rentals or outfitter services.

Further, the congress has delegated the USFS and BLM only limited authority to charge fees. Federal recreation fee authority comes from the Land and Water Conservation Act which requires certain facility standards be met where fees are charged, i.e. drinking water, grill, picnic table, toilet, parking lot, garbage can must be available. Fees currently being assessed by the USFS and the BLM are "user fees" and not entrance fees. Entrance fees are established by congress for large recreational complexes and not for individual sites.

In summary, federal laws and policies would have to be changed in order for federal recreational managers at state water projects to participate in a state entrance fee program. It is not likely that national policy could be changed for four remote and little used state projects.

**Liability exposure increases when fees**

The duty to protect recreationists from injury goes up when fees are charged.

are charged...

An agency's duty of care for free recreational use covers only acts or omissions which constitute willful or wanton conduct; a very low standard meaning deliberate acts to hurt someone or damage property.<sup>7</sup>

An agency's duty of care for recreationists paying a fee goes up to a standard of ordinary negligence;<sup>8</sup> a much higher standard that makes one liable for injuries and property damage caused by falling limbs from trees which should have been pruned, recreational beaches which should have been cleaned, boat ramps or other facilities in disrepair, for example.

One damage award in a serious matter can erase many years of revenue which might be earned at fee sites. Consequently, the cost of maintenance to minimize risk can increase substantially at fee sites.

New entrance fees are not a good option...

Entrance fees would be the fairest assessment among the options studied if they were feasible.

Unfortunately, they are not economically feasible at the places where they are not already charged. Use is too low.

At places where use is high enough to make fees feasible, they are already being assessed.

And, existing fees are needed for recreation area management...

Earnings offset part, but not all, recreational management costs. Typically, user fees offset only about 30% of operating costs and none of the capital costs at recreation sites.<sup>9</sup>

The existing fee levels are already pushing the limits of user tolerance. Increasing them would make buyer resistance a significant problem. Net revenue would be very low and not worth the administrative costs.

Diverting a part of existing recreational entrance fees would cause a reduction in current service, and thus cause a very negative response from users which would reduce revenues from existing levels.

Finally, the state could not mandate federal fees. The state would have to manage these sites, adding administrative costs now borne by the federal agencies, resulting in a net loss.





## V. Water Development Stamp

A prerequisite for fishing, duck hunting, boating or other license...

If this method could be used to charge for all of these wildlife and water related sports, it would assess most of the recreational users of state water projects.

However, there is an unacceptable financial penalty associated with encumbering any fishing or hunting license in this manner. It would mean the loss to DFWP programs of \$8.5 million annually (20% of DFWP operations and Capital budgets) in federal funds from the Federal Aid in Sport Fish and Wildlife Restoration Acts.<sup>10</sup>

Diversion of fishing and hunting license fees is illegal...

These federal laws and their implementing rules prohibit "diversion" of hunting and fishing license funds for any purpose other than the administration of the fish and wildlife agency. The revenue from any license that is required of hunters or anglers is considered to be "license" revenue by the federal acts.<sup>11</sup>

Furthermore, control over state license funds must be maintained by the fish and wildlife agency director. Montana, in accepting federal fish and wildlife funds, assented to these provisions in Sections 87-1-601, 87-1-701 and 87-1-708, MCA.<sup>12</sup>

Federal Register 50 CFR Part 80.4 Diversion of license funds, spells the details and is attached in the Appendix.

Use of boating fees is still legal...

Current Federal Aid requirements do not address state boat registration and other fees. However, there has apparently been some recent discussion regarding possible future amendment of the relevant federal acts to subject state boating revenues to the same restrictions and requirements as state fishing license revenues.<sup>13</sup>

There are precise records of motorboats and 12'+ sailboats...

In 1990, the Montana Department of Motor Vehicles, Registrar's Bureau shows 43,358 titled and 36,752 confirmed registered motorboats and sailboats 12 feet and longer.<sup>14</sup>

There are no records of small, non-motorized craft...

There are no records kept, by any agency, of the numbers or types of non-motorized boating craft such as canoes, kayaks, rafts, sailboards, sailboats under 12 feet.

A very rough estimate of 32,000 such non-motorized craft was made for this study by comparing information found in the 1985 Statewide Comprehensive Outdoor Recreation Plan (SCORP).<sup>15</sup>

Could add to existing registration fee for motorboats...

A virtually cost free way of collecting from owners of motorized boats and sail boats 12 feet and over would be to increase, and earmark, the fee charged for the hull identification number established in Section 23-2-512, MCA. The current fee is \$2.50 and drops to \$2.00 on July 1, 1993.

While this departs from the Water Development Stamp concept, it is a less costly approach. It also saves the boater the trouble of adding another "sticker" to the boat.

A \$2.00 increase would raise over \$86,000 annually at no increased cost of administration for already titled motor and sail boats.

Fairness suggests using revenue only where motorboating is of good quality or is improved...

As mentioned in the notes following table 1, boating recreation is seriously and adversely affected by water management at most state water storage projects. Boaters could raise a legitimate fairness issue about using this revenue to maintain places where boating is not possible or severely curtailed by pool area or drawdown.

This problem might be mitigated by altering water management and adding boating facilities.

A new tax would be needed for non-motorized craft...

The speculative total of 32,000 non-motorized craft could be similarly taxed but there would be administrative and enforcement costs, in this case, because these boats are not presently titled or registered.

Fairness suggests that small craft funds improve river recreation, too...

There is a more serious fairness question to be considered in the case of these smaller boats. They are more likely to be using rivers and streams than reservoirs. Owners might expect

their taxes to be used, at least in part, to improve those recreational opportunities. In situations where state water project management also improves boating downstream this wouldn't be an issue.

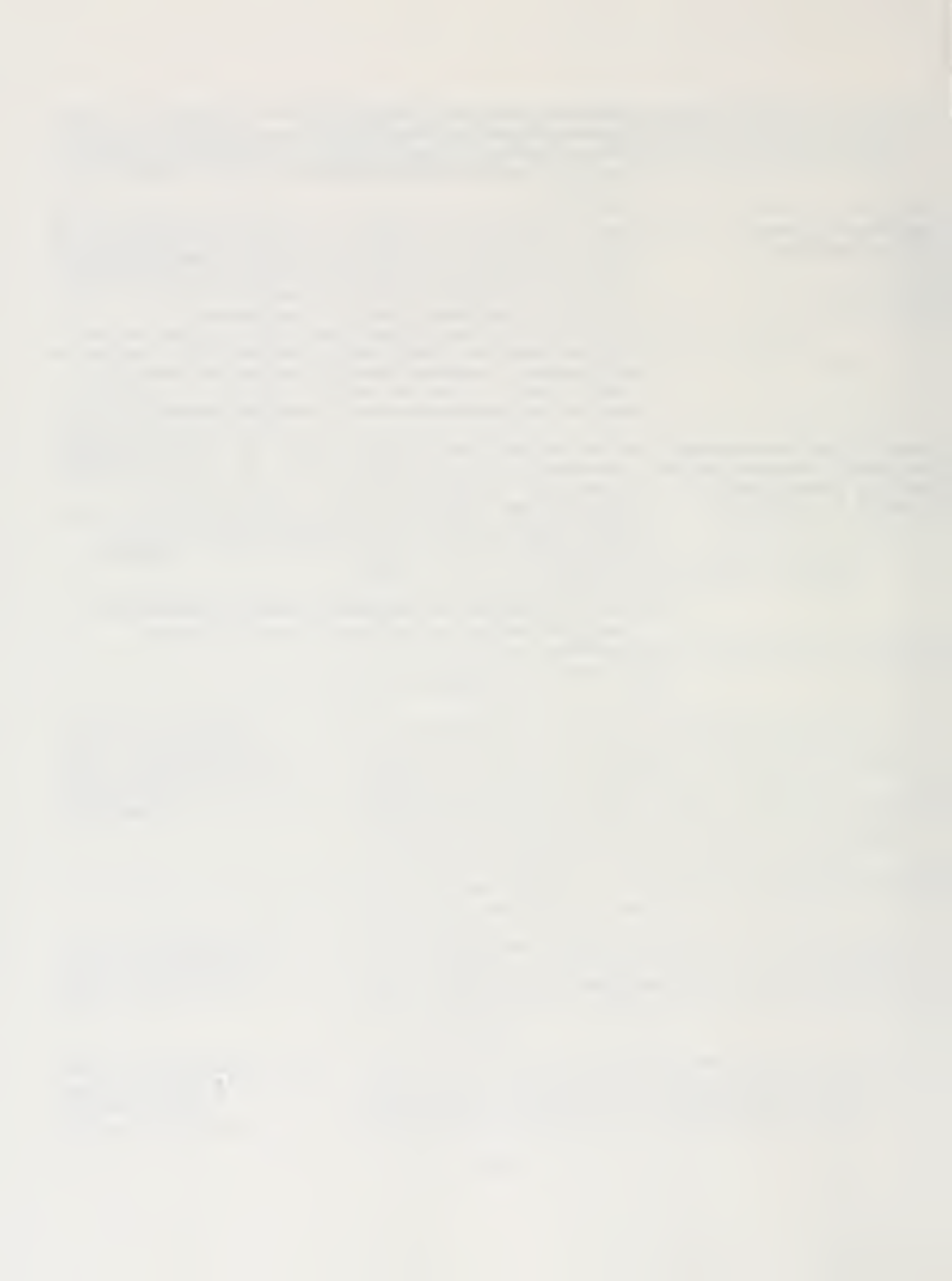
**The Smith River  
Management Act...**

Additionally, the State of Montana provides comprehensive recreational management of only one river, the Smith. The Smith River Management Act (HB-655, 51st Legislature), Section 23-2-401, MCA, has given the state special management authority.<sup>16</sup> The almost inevitable extension of this program as other rivers become more congested will mean a suitable funding mechanism must be identified. A tax on small craft is an obvious option the legislature may want to preserve.

**This option could work  
for boat licenses but  
not for hunting and  
fishing licenses...**

It would be legal, and it could be made fair and profitable to raise and earmark the Identification Number fee for titled boats. Adding such a provision to non-titled or registered small craft would also be legal and could be made fair by using some of the revenues for river recreation programs.

It is not legal to require a Water Conservation Stamp prerequisite for hunting and fishing licenses.



## VI. Motorboat Fuel Tax Increase

The current state law sets aside 0.9% of state gas tax for management of state parks where motorboating is allowed...

Section 60-3-201, MCA, "Distribution and use of proceeds of gasoline dealers' license tax" states, in part, "(1) All money received in payment of license taxes under the Distributor's Gasoline License Tax Act, except those amounts paid out of the department of transportation's suspense account for gasoline tax refund, must be used and expended as provided in this section....(a) 9/10 of 1% of all money must be deposited in the state park account;"

Subsection (4) further specifies, "Money credited to the state park account in the state special revenue fund may be used only for the creation, improvement, and maintenance of state parks where motorboating is allowed, except for the payment of refunds under 15-70-221 through 15-70-226. The legislature finds that of all the fuel sold in the state for consumption in internal combustion engines, not less than 9/10 of 1% is used for propelling boats on waterways of this state."

Fish, Wildlife and Parks gets \$790,000 per year to maintain motorboat parks...

The "motorboat gas tax" account accrues about \$790,000 per year. It all goes to the Department of Fish, Wildlife and Parks. It provides only about 55% of the annual field operations and maintenance funding for 20 "motorboating" state parks as well as a pro rata share of law enforcement and administrative overhead expense.

The existing boat gas tax provides only a small percentage of what is needed...

This account has not been sufficiently large ever to have used it for land acquisitions or for capital facility maintenance or construction even though the law permits it. Other funds must provide for about 45% of field O&M and all of the capital needs.

There are five "motorboat state parks" on state water projects: Ackley, Cooney, Painted Rocks Tongue and Deadman's Basin. Motorboat gas taxes are, or have been, budgeted to operate them.

Motor boating is also associated with a large number of fishing access sites but motorboat gas taxes are not used to maintain them. Since they

are not designated "state parks" the law precludes it, and there is not enough money to go around, in any case.

The Department of Fish, Wildlife and Parks manages three state water projects as fishing access sites: Willow Creek (Harrison), Martinsdale, and Nilan, but spends no motorboat fuel taxes on them.

No other agency receives state motorboat gas tax revenues.

Motorboating occurs on 20 of the 22 water projects in this study. Motorboating is limited to very limited on five of these due to their size, depth or drawdown. On most others, seasonal drawdown, particularly during dry years significantly effects, and sometimes precludes motorboating.

A motorboat gas tax increase must be tied to boat gas consumption...

To be eligible for federal gasoline tax allocations the state of Montana cannot "divert" taxes from fuels burned in highway vehicles to other purposes. In 60-3-101 MCA, Montana assents to federal Title 23, U.S.C. (Section 126, Diversion).

Therefore, to increase the motorboat gas tax allocation it must be shown that the new amount is commensurate with fuel burned in boats.

Preliminarily, a new, independent, study supports 1.08% nationwide, but Montana's preliminary figures do not support increasing our 0.9%...

Price Waterhouse, a nationally known private firm, is doing a study of recreational boat fuel consumption for the Secretaries of Transportation and Interior.<sup>17</sup> The study, which was mandated by Congress, surveyed boaters in all 50 states. The report, due the Autumn of 1992, will be state specific and can be expected to provide the Montana Legislature with the best information available about boat gas consumption in Montana. Unofficial sources have said that the preliminary national estimate is 1.08%. Montana's preliminary figures are lower and do not support an increase.

Currently, 0.9% generates about \$790,000 per year. If accurate for Montana, 1.08% would yield \$948,000 per year.

Other law changes would be needed to use the money at state water projects...

Section 60-3-201 (4) requires that, "Money credited to the state park account in the state special revenue fund may be used only for the creation, improvement and maintenance of state parks where motorboating is allowed..."

This law would have to be amended to use the funds for dam maintenance, particularly at the 17 projects which are not state parks. And, to be consistent with its purpose, the motorboat gas tax should only be used on projects which provide a reasonable level of recreational motorboating.

If supported by boaters and the fuel consumption survey and if existing state laws are amended, a motorboat gas tax increase appears feasible...

Acceptance by motorboaters is another factor that bears on the feasibility of this alternative. They will expect their recreational boating to not only be possible but also accommodated by useable water levels during reasonable periods, serviceable roads and ramps, and possibly other necessities like toilets.

This source of funding, particularly if used in conjunction with sources from other users, would be reasonable and fair at projects where reasonable motorboating facilities and water management exist or can be developed.

Fairness suggests that the funding be available to improve boating at other projects, too...

As mentioned in the introduction, the Department of Fish, Wildlife and Parks is responsible for 21 water projects outside the scope of this study. Twelve provide at least some motorboating recreation for water sports as well as fishing and waterfowl hunting. Of these, seven need improvements at an estimated cost of \$4,800,000.

If this funding option is considered, fairness to boaters and those who must otherwise pay for DFWP project repairs should allow this money to be used on DFWP projects, especially State Park System motorboat sites which are currently seriously underfunded.





## VII. Land and Water Conservation License

Requiring the purchase of a Land and Water Conservation License by anyone using public lands or water...

Neither the State Water Plan nor S.B. 313 provides a definition of "public lands" for the purpose of this study.

Therefore, the study will assume that federal lands of the US Forest Service (USFS 17,598,066 acres), Bureau of Land management (BLM 8,082,082 acres), National Park Service (NPS 1,204,428 acres), Bureau of Reclamation (BOR 88,259 acres), US Fish and Wildlife Service (USFWS 1,500,000 acres), Army Corps of Engineers (COE 369,470 acres) should be considered.<sup>18</sup>

Both federal and state lands are considered...

The study will also assume that state owned lands administered by the Department of Fish, Wildlife and Parks (DFWP 339,447 acres), the Department of Natural Resources and Conservation (DNRC 32,088 acres), and the Department of State Lands (DSL 5,124,762 acres) should be considered.<sup>19</sup>

The state cannot assess user fees on federal land it does not administer...

There are, in practical application of this option, seemingly insurmountable legal obstacles. The state lacks authority to assess fees for access to federal lands which it does not manage.<sup>20</sup>

Additionally, developed federal recreation facilities managed by the National Park Service, Forest Service and BLM already have user fees in place. Congress retains authority for setting fees on federal lands. Only the Congress can set entrance fees. It has also provided very specific guidelines for the charging of user fees at specific sites. For example, as mentioned in Chapter IV, for the USFS to charge user fees it must provide a parking space, toilet, table, fire grill, drinking water and trash removal.

Fees collected at federal sites go to the Land and Water Conservation Fund.

The Congress is currently debating charging fees for dispersed recreation on undeveloped BLM and USFS lands. If adopted, these fees will be used to offset the federal cost of recreation

management. One concept being considered is President Bush's \$30 annual "America the Beautiful" pass. It seems unlikely that the money could be used for state water project maintenance.

**The one exception provided in federal law is not being used in Montana...**

Finally, the federal government has authority in the Sikes Act, P.L. 93-452, to require a "Public Land Management Area Stamp" for hunting, fishing and trapping on public lands designated by the Secretaries of Agriculture and Interior and the Chairman of the (then) Atomic Energy Commission. The stamps would be sold by state fish and wildlife agencies. The revenue would be earmarked for habitat improvement projects on subject lands in cooperation with the state(s).

While demonstration co-operative habitat improvement projects have been undertaken in Montana under authority of the Sikes Act, the access stamp has not been used because of its complications and the contentious public issues attendant to its implementation.

**Diversion of funds is the compelling issue on state school trust lands and most DFWP lands...**

Article X of the Montana Constitution prohibits diversion of trust land revenue from the school trust fund.

Most lands owned by DFWP have been acquired and/or developed, or are being managed, with the help of federal funds. In the case of State Park System lands, it was the Land and Water Conservation Fund. There already is a recreational user fee for state parks as discussed in chapter IV.

In the case of fish and wildlife lands diversionary protection of the Federal Aid in Fish and Wildlife Restoration Programs would preclude any user fee revenues from being used on anything except the projects where the money was earned. Any "profits" not needed to manage federal aid assisted lands would have to be returned to the USFWS.

**Fairness is also a problem...**

The legal obstacles notwithstanding, there is also a fairness question raised by this option. The public is not likely to consider Land and Water Conservation License a "fair" user tax because its revenue would not be used to improve the national parks, forests or other lands and facilities where the vast majority of the money would be earned.

Users would also likely rebel at the idea of adding a Land and Water Conservation License to the new recreational use license required to hunt and fish state school trust lands, or adding it to the entrance and camping fees already assessed at State Parks.

**It could be done on State Water Storage Projects...**

This option could be applied to DNRC state water storage projects without the legal or fairness difficulties. However, it then becomes an entrance fee which is discussed in Chapter IV.

**But then it's an entrance fee, see Chapter IV...**

Then the question becomes one of practicality and profitability. The conclusion in Chapter IV is that there are probably more efficient ways of assessing users.



## VIII. DFWP Taxes or Fees

The department manages 39 funds...

Department funding is very tightly earmarked as evidenced by the need for 39 separate accounts. These include the General Fund which is presently appropriated for state park maintenance, 24 state and private special revenue funds, 6 federal and private special revenue funds, 5 proprietary funds and 3 fiduciary funds.

See "FUNDING SOURCES" on page 41 for a complete list and explanation of these funds...

Most of these sources would not be appropriate for reasons that become obvious upon reading their purpose and enabling federal or state legislation.

The first shown on the list, the General Fund (01100) is not a DFWP fee or tax. The issues attendant to its use are so well known to the legislature that it needs no elaboration except to note that it would be a legal and fair funding option. Its feasibility is a question of priority to be answered by the legislature.

Five department funds warrant discussion, under the mandate of S.B. 313, as potential sources of revenue for state water storage projects. Two of these, Parks Earmarked Revenue (user fees - 02411) and the Motorboat Gas Tax (02412) have already been discussed in previous chapters of this study.

Three funds will be considered in this chapter...

The three remaining funds which will be discussed here are: 1) the Fish and Game Earmarked Revenue Fund (02409) which is the department's general sports license account; 2) the PR-DJ Grants (03097) particularly the Federal Aid in Sport Fish Restoration Fund (Dingell-Johnson), and 3) the State Parks Federal Revenue Fund (03098), particularly the federal Land and Water Conservation Fund.

All are presently committed to existing programs...

Redirection of these funds to state water storage projects would require reducing existing services elsewhere, increasing fish and game license fees or replacing the revenue from other sources.

Fish and Game Earmarked Revenue (02409)...

Account 02409 is the department's primary source of funding for fish and wildlife related activities, both operations and capital

construction.

It has been used for DFWP dam projects...

Present known liability for those dams is \$4.8 million...

Hunters and fishers must benefit for it to be legal...

Under control of the DFWP Director the fund could be used for state water storage projects...

The legislature has the option of increasing fishing license fees...

They're already being raised and may have to be raised again in 1995 to maintain current service...

Buyer resistance could be a costly matter...

This account has been used to construct DFWP recreation water projects such South Sandstone, Bearpaw and others. It is currently a funding source for studies to bring department owned dams into compliance with safety standards.

This account pays for maintaining the fisheries (and in some cases for fishing access facilities) at state water storage projects.

Anti-diversionary language in Federal Aid statutes and state assenting laws would strictly control the conditions under which this state funding source could be used for state water storage project maintenance.

Fish and Game earmarked state revenue must remain "under the control" of the department director. That is, the director must agree that the money is being spent on an eligible and worthy fish or wildlife project; the DFWP director must be able to control the actual expenditures; and fish and wildlife must be enhanced commensurate with the expenditures. Each project must be evaluated individually for eligibility and level of funding.

If DFWP license funds are used, the legislature has the option of redirecting existing revenues or increasing fishing license fees.

It should be noted that the 1991 session increased license fees in two phases. The first increase is in effect for the current license year. A second increase will go into effect in 1993/94.

The department estimates that, due to inflation, the 1995 legislature will again have to consider fee increases just to maintain current level department services.

The license system is complicated. See end note.<sup>21</sup> A flat, across-the-board, increase would not distribute the burden fairly. But, for the sake of simple illustration, assume a \$1.00 increase to all fishing licenses which would generate \$334,150, less a reduction for buyer resistance.

From experience, the department could expect a buyer resistance of 4% the first year, 2% the

second year and recovery to former sales levels in the third year. It is important to note that the buyer resistance would affect the entire license, not just the increase. The total value of all fishing license combinations for 1992 is \$4,487,640, plus a \$1/license increase would equal \$4,821,790. A 4% buyer resistance the first year would cost almost \$193,000, or more than 1/2 of the first year's projected new revenue to the department.

**The department committed that it would not seek fee increases before the 1995 session...**

It would be difficult to gain angler support of another license increase before the current one has even been fully phased-in. Additionally, the department committed to the legislature that it would not seek another increase for at least 2 biennia when the 1991 increases were supported by anglers.

Experience has also shown that anglers would probably resist earmarking the increase for dam maintenance unless they are convinced that sport fishing would benefit and others are paying their fair share.

Resident Montana fishing licenses are about in mid-range when compared to neighboring states. Nonresident licenses are at the upper end when similarly compared.

Use of license funds is an extremely sensitive issue among constituent groups. This is especially true, now, because of the increase in license fees during the 1991 legislative session necessary to maintain the current level of customer service.

**Dingell-Johnson Federal Aid in Fisheries Restoration (03097)...**

The Dingell-Johnson fund currently generates about \$4.2 million annually. A minimum of ten percent must be used to provide additional, improved or safer motorboat fishing recreational opportunities.

**It is eligible...**

The money comes from federal excise taxes on fishing tackle, imported boats, motorboat fuels, small engines and interest earnings.

**Would require redirection from existing uses...**

The department uses it for all fisheries surveys and inventories (\$2,000,000), hatchery O&M (\$900,000), hatchery construction (\$600,000), fishing access improvements (\$300,000) and motorboat access improvements (\$400,000).

The federal fund must be matched with at least 25% non-federal funds.

The fund carries with it all of the strict eligibility requirements discussed in previous sections of this study and must be appropriated by the legislature.

**On a project-by-project basis can be used for a pro rata share of the costs...**

These conditions mean that the Federal Aid fund would have to be appropriated on a project by project basis, with the concurrence of the DFWP director and USFWS. The amounts appropriated would have to reflect only that pro rata portion of total project costs which can be shown to benefit fisheries or motorboat fishing enhancement. The Dingell-Johnson fund would only pay a maximum of 75% of this pro-rata share.

On a typical park system project where there are only recreation costs to be prorated over fishing related boating vs. other recreation, only 40-50% of the project is cost shared. A typical water storage project could expect a far lower cost sharing ratio when agricultural benefits are also factored.

Fisheries and boating opportunities and benefits would have to be maintained at projects where these funds are used. This could require substantial modification of traditional management.

**A 25% state match is required...**

The 25% non-federal share (of the fisheries enhancement portion of the project), might come from one of the other feasible options identified in this study, or from other sources.

**Federal Aid in Wildlife Restoration, though technically eligible, is not a practical option...**

As a final note about account 03097, it also includes funds from the Federal Aid in Wildlife Restoration Act (Pittman-Robertson Act). All of the rules which apply in the Dingell-Johnson (fisheries) Act apply to Pittman-Robertson (wildlife) funds. One could make an argument that these funds could be used for waterfowl restoration at state water storage projects. However, the connection is not nearly as strong as the fisheries tie, so the pro rata share would be much less, and this fund (which is supported by shooting sports) is not increasing and a declining future is projected.



**The Federal Land and  
Water Conservation  
Fund (03098)...**

The Land and Water Conservation Fund, LWCF, (03098) carries broad authority to acquire land or build facilities for outdoor recreation. Where used, a project must remain available for public recreation in perpetuity, or be replaced with similar recreation at equal current market value.

It cannot be used for operations and maintenance.

As with federal fish and wildlife funds, only a pro rata share of costs related to recreation are eligible and a 50% non-federal match must be provided.

Over 90% of LWCF comes from the sale of off-shore oil and gas leases and the balance comes from the sale of federal surplus property and federal recreational user fees.

**LWCF is an eligible,  
but unreliable and  
limited source of  
money...**

The major drawback in using these funds is the unreliability of federal appropriations. About \$8 billion lies unappropriated in the account as an offset to the federal debt. Montana's allocation has gone from a high of \$3.4 million per year in 1979 to the current \$179,000.

In 1982 promised LWCF could not be provided for the reconstruction of Cooney Dam when the Congress appropriated no money. This complication caused a great deal of difficulty and frustration for DNRC and the Rock Creek Water Users Association.

**The entire \$179,000  
per year now goes to  
state park system  
rehabilitation...**

This money is currently being used to rehabilitate State Park System facilities where there is at least a \$20 million unmet need.



FUNDING SOURCES  
DEPARTMENT OF FISH, WILDLIFE AND PARKS  
1991-1992

01100 General Fund: During the 1991 Legislature, the department received and appropriation to fund a portion State Park System Management. (Section 23-1-101, MCA)

STATE AND PRIVATE SPECIAL REVENUE FUNDS

02051 Private Contracts and Grants: Accounts for all private monies received in the form of a donation, grant, or contract. (Replaces account #03405.)

02055 Wildlife Mitigation Trust Fund - Private : Accounts for private funds, and the interest earned thereon, receive under written agreements, contracts, or authorizations, from donations, grants, or requests to the Department for the purpose of wildlife mitigation or enhancement. (Section 87-1-611, MCA)

02057 Fisheries Mitigation Trust Fund - Private : Accounts for private funds, and the interest earned thereon, received under written agreements, contracts, or authorizations, from donations, grants, or requests to the Department for the purpose of fisheries mitigation or enhancement. (Section 87-1-611, MCA)

02061 Non-Game Wildlife Account: Accounts for the contribution of monies to the non-game wildlife program as provided for by Section 87-5-121, MCA. The source of funds is the voluntary contribution by taxpayers of income tax refunds, direct donations, and interest earnings. These monies are to fund non-game wildlife management programs.

02085 Waterfowl Stamp Special Revenue Account: Used to receive money from the sale of stamps and related artwork for waterfowl. The money may be expended only for the protection, conservation and development of the wetlands in Montana (87-2-411, 412, MCA).

02086 Mountain Sheep Licenses: To account for monies received from the auction of male mountain sheep licenses. The receipts must be used for the benefit of mountain sheep (87-2-722, MCA).

02112 Moose Auction Account: Accounts for revenue generated by the auction of one moose license each year. The funds must be used for moose related research, management, and habitat improvement. (Section 87-2-724, MCA)

02113 Upland Game Bird Enhancement: The uses of these funds are restricted to 10% for the administration of the Upland Game Bird Enhancement program, and to pay for the cost of releasing pheasants. All funds unexpended for the administration of the program and the cost of releasing birds, reverts at the end of the year for use in developing, conserving, and enhancing upland game bird habitat. Funds are derived from a portion of the nonresident game bird license, nonresident big game combination license, resident game bird license, and resident sportsman license. (Section 87-1-246 250, MCA)

02114 Wildlife Habitat: These funds are for the lease or purchase of land or easements for wildlife habitat. Funds are derived from a portion of the nonresident combination, antelope, moose, mountain goat, mountain sheep, mountain lion, black bear, turkey, and deer combination licenses, and the resident sportsman license. Twenty percent of the funds earmarked under this statute are deposited into the Real Property Trust Account (09006). The interest earned thereon is deposited into Accounting Entity 02410 and used for the development and maintenance of wildlife habitat. (Section 87-1-242, MCA)

02115 Off-Highway Vehicle: The department receives the \$5 decal fee which owners of off-highway vehicles are required to pay. The decal fee and the interest earned thereon is distributed 40% for the enforcement of the off-highway vehicle registration act, and 60% for the development and implementation of an off-highway vehicle recreation program. The department also receives any fines collected for violations of this act. Fifty percent of these fines and the interest earned thereon is used for enforcement of the act, and the other 50% is used to promote vehicle safety and education. In addition, the department receives the \$5 off-highway vehicle dealer renewal of registration fee, and the \$5 registration fee. These fees and the interest earned thereon is used to promote vehicle safety and education. (HR 165, Sections 23-2-804,807 and 61-3-510, MCA)

02148 Paddlefish Roe Account: The Department is authorized to enter into an agreement with a nonprofit organization for the purpose of allowing that organization to accept and market donated paddlefish roe. The Department must receive one half of the sales proceeds in excess of the costs of collection, processing, marketing, and administration. These proceeds, and the interest earned thereon, must be used by the Department to benefit the paddlefish fishery. (HR 289, Section 87-4-601, MCA)

02149 River Restoration Account: Funds deposited in this account are earmarked for projects which will improve rivers and their associated lands for the purpose of conserving and enhancing fish and wildlife habitat. Funding of this program is provided by \$.50 from each resident fishing and sportsman license, and \$1 from each nonresident season fishing license sold. (HR 754)

02213 Off-Highway Vehicle Fuel Tax: Of the state gasoline tax, 1/8 of 1% is earmarked for this accounting entity. Monies credited to this account may be used to develop and maintain facilities open to the public at no admission cost. Up to 10% of the money deposited may be used to repair areas that are damaged by off-highway vehicles. Ten percent of the money deposited must be used to promote off-highway safety. (60-3-201 (1c) and (6) MCA)

02407 Snowmobile Fuel Tax: Of the state gasoline tax, .5% is earmarked for this accounting entity. Of this amount, 90% is for the development and maintenance of snowmobile facilities and the other 10% is used to promote snowmobile safety. (60-3-201 (5) MCA)

02408 Coal Tax Trust Earnings: Designated for the acquisition and management of state parks. The source is the interest earned from the Coal Tax Trust Account. Restriction: Park acquisition, development, operation and maintenance. (15-35-108 (3f) MCA)

02409 Fish and Game Earmarked Revenue: For the support of the various programs carried on by the Department of Fish, Wildlife and Parks which benefit sportsmen, including the development of hunting and access areas and capital construction projects. The primary source is from the sale of fishing and hunting licenses. Other sources include miscellaneous permit sales such as guides, outfitters, trapper, taxidermists, zoo, etc. (87-1-601 MCA)

02410 Real Estate Trust Earnings: Supports operation, development and maintenance of department real property. Interest earned on deposits in the Real Property Trust Account 09002 is the source of revenue for this entity. (87-1-601 (5))

02411 State Parks Earmarked Revenue: Supports general operations relative to state parks. Sources are entry fees and camping fees collected at State Parks, cabin site rentals, concessionaire payments and other miscellaneous revenue. Used for any state parks system operation. (23-1-105 MCA)

02412 Motorboat Fuel Tax: Of the gasoline taxes, .9% is earmarked for creation, improvement, and maintenance of parks where motorboats are allowed. Note: The rate was increased from .6% to .9% effective July 1, 1979. (60-3-201 (4) MCA)

02413 Motorboat Certification and Identification: Administration and enforcement of motorboat and vessel regulation statutes. The \$2.00 decal on motorboats and violation

finer provide the funds. Restriction: Administration and enforcement of motorboat registration and safety laws. (23-2-512 MCA)

02414 Snowmobile Registration Earmarked Revenue: Accounts for the \$2.00 decal fee for snowmobiles. Restriction: \$1.00 of each fee for enforcement, \$1.00 for development, maintenance, and operation of snowmobile facilities. All fines and forfeitures under this part are deposited to this account and used for snowmobile education and safety. (23-2-616, 23-2-644 MCA)

02415 FAS Acquisition Earmarked Revenue: Funds credited to this account are used for fishing access site acquisition. Portions of fishing license fees are set aside for fishing access site acquisition. Statute requires that such funds be accounted for separately. Of the money, 25% can be used for operation, development and maintenance of sites acquired under this law. Source is \$1.00 of each resident fishing license, \$1.00 of each nonresident 5-day license, and \$5.00 of each nonresident class B fishing license. (87-1-605 (1) (2) MCA)

02416 Wardens Retirement - Fines: Fines resulting from violations of Title 87 of the Fish, Wildlife and Parks regulations and statutes are the source of revenue. These monies are designated to be used to reduce the unfunded liability of the Wardens Retirement Fund. (87-1-601 (4), (19-8-504 MCA)

02469 Habitat Trust Interest: Funds are used for the development and maintenance of department real property used for wildlife habitat. Interest earned on deposits in the Real Property Trust - Wildlife Habitat Account 09006 is the source of revenue for this entity. (87-1-242, MCA)

#### FEDERAL AND PRIVATE SPECIAL REVENUE FUNDS

03097 P-R and D-J Grants: These funds support areas of various fish and wildlife management related projects. Funding is from U.S. Fish and Wildlife Service grants. These grants support Fish (D-J) and Wildlife (P-R) Restoration. P-R funds are provided by an 11 percent manufacturer's Federal Excise Tax on sporting arms and ammunition. DJ monies are from a 10 percent tax on fishing gear along with federal motorboat fuels taxes (87-1-601, MCA).

03098 State Parks Federal: These funds are used to acquire, develop and maintain the various state parks and recreation areas and fishing access sites. The funding source is primarily the Federal Land and Water Conservation Fund administered by the National Park Service. (23-1-102 and 23-1-103 MCA)

03403 Federal and Private Revenue: These are miscellaneous federal funds used to support various fish and wildlife management related activities other than PR and DJ and Land and Water Conservation funds.

03404 Overhead: Accounts for all department overhead received from the application of the federally approved department wide overhead rate. These funds are intended to be used for those indirect costs which are approved for federal overhead. (87-1-601 MCA)

03406 Outdoor Recreation Clearance: Accounts for Federal Land and Water Conservation funds which are administered by the department and passed through to local governments. (23-2-102 and 103, MCA)

03906 FW Mitigation Trust Fund: Accounts for federal funds received under written agreements, contracts, or authorizations, from donations, grants, or requests to the Department for the purpose of fish and wildlife mitigation or enhancement. (Section 87-1-611, MCA)

#### PROPRIETARY FUNDS

06008 Snowgroomer Replacement: To record the revenue and expenditures resulting from providing snowgroomer equipment for snowmobile clubs. Users of this equipment are charged a rate corresponding to the depreciation expense incurred.

06501 Duplicating Center/Office Supplies: Accounts for intra-departmental payments received for copying and printing services rendered, and for disbursements required to offer the services and supplies.

06502 Equipment Enterprise: Accounts for the costs of providing a Department-owned motor vehicle fleet, and the intra-departmental reimbursement of these costs.

06503 Warehouse Inventory: A self-financing account providing for intra-departmental sales and replenishment of warehouse and office supply inventory.

06541 Grounds Maintenance and Snow Removal: Accounts for the costs of providing grounds maintenance and snow removal in the Capitol complex area, and the inter-departmental reimbursement of these costs.

#### FIDUCIARY FUNDS

07016 Drawing Clearance Account: Accounts for funds received from big game license applicants and other sources pending a determination of the correct disposition.

09002 Real Property Trust: Revenues are received from the sale or lease of department lands or interest in lands. Interest accrued from the investment of this trust is transferred to accounting entity 02410 for expenditure. (87-1-601 (5), MCA)

09006 Real Property Trust - Wildlife Habitat: Section 87-1-242, MCA, earmarks 20% of the revenue collected from the sale of certain licenses and permits for deposit into the real property trust account. Interest accrued from the investment of this trust is transferred to accounting entity 02469 for expenditure. (87-1-242, MCA)

## IX. End Notes

1. Montana Water Plan, Water Storage Section, December 1990, Introduction, p.2, Department of Natural Resources.

2. *ibid*, pp 8-9

3. See Study Plan in Appendix

4. See list of Study Participants in Appendix.

5. DFWP WATER PROJECTS NOT IN THIS STUDY

NAME	SIZE IN ACRES	BOATING YES/NO	ESTIMATED REPAIR COST
South Sandstone	372	yes	\$1,600,000
Bearpaw	185	yes	700,000
Clearwater	17	no	100,000
Fish Barrier			
Whitetail	65	yes	600,000
Park Lake	96	yes	1,000,000
Freezeout	11,000	yes	
Ninepipe	3,064	yes	
Ashley headgate	NA	no	
Gartside	80	yes	
Sleeping Buffalo	1,864 (lease)	yes	
Fox Lake	1,202	yes	
Pike Marsh	43 (lease)	no	
Browne's Lake (dam gone)	74	yes	
Council Grove (dam gone)	187	yes	
Lake Elmo	81	no	
Brady Lakes	17	no	
Devon (dam gone)	11	no	
Rush Hall	25	yes	300,000
Red Rock (dam gone)	5	no	
Ringy-Dingy	?	no	500,000

\* Motorboating is not common at many projects where it is permitted because of physical constraints.

6. Total entrance receipts for FY91, SBAS Report 632, P. 229 (Fiche), Acct. 02411, Obj. 2200 = \$220,045. Less Passport receipts (Per Cheek 2-27-92), (6897 full @\$15 = \$103,445; 1718 early bird @ \$12 = \$20,616; 1005 half @ \$7.50 = \$7537.50; 542 half early bird @ \$6.00) \$134,860.50 = \$85,484.50 in daily entrance receipts which

is 38.77% of total entrance fees.

7. Section 70-16-301, MCA, Recreational purposes defined (includes hunting, fishing, swimming, boating, water skiing, camping, picnicking and other uses); and 70-16-302, MCA, Restriction on liability of landowner or his agent or tenant (people who use the land without charge do so without assurance that the property is safe for any purpose). This law was passed to encourage landowners to allow recreational use of their property without fear of suit.

8. This is founded on a long history of court rulings (rather than legislation) which find that "invitees" from whom one expects pecuniary consideration are entitled to an environment free of the risks caused by the negligence of their host.

9. Montana State Park System and park systems throughout the country.

10. Federal Aid in Sport Fish Restoration Act (Dingell-Johnson Act) or (Federal Aid in Fish Restoration Act). Act of August 9, 1950 (64 Stat. 430), as amended (16 U.S.C. 777-777k).

Federal Aid in Wildlife Restoration Act (Pittman-Robertson Act). Act of September 2, 1937 (50 Stat. 917), as amended (16 U.S.C. 669-669b, 669c-669i).

Memo, Bobbi Balaz to Don Hyyppa, Subject: Federal Aid Information Re SB 313 Study, Dated December 10, 1991.

11. 50 CFR Part 80-Amended, Paragraph 80.4

Revenues from license fees paid by hunters and fishermen shall not be diverted to purposes other than administration of the State Fish and Wildlife agency.

(a) Revenues from license fees paid by hunters and fishermen are any revenues the State receives from the sale of licenses issued by the State conveying to a person the privilege to pursue or take wildlife or fish....License revenues include income from:

(1) General or special licenses, permits, stamps, tags, access and recreation fees or other charges imposed by the State to hunt or fish for sport or recreation....

12. Section 87-1-601, MCA, stipulates how fish and game money may be used. Section 87-1-701, MCA, is the state's assent to the federal Dingell-Johnson (fisheries) bill. Section 87-1-708, MCA, is the state's assent to the Pittman-Robertson (wildlife) bill. They agree to refrain from diverting state fishing and hunting license revenues to other than fish and wildlife purposes.

Copies of all three statutes are found in the appendix.

13. Balaz memo, p.2

14. Part IV Program narrative, State of Montana, Montana Boating safety Program, FFY 92 - Contract 11.01, Prepared by Enforcement Division, Department of Fish, Wildlife and Parks.

15. 1988 Statewide Comprehensive Outdoor Recreation Plan (SCORP); p.21, figure 11, 1985 Participation.

ACTIVITY	PARTICIPATION
Canoeing	66,200 people
Kayaking	6,600
Rafting	<u>106,400</u>
	179,200 people
Motorboating	196,000 people
Sailing	<u>19,200</u>
	215,200 people

Assume that the participation in the first grouping (canoeing, kayaking and rafting) is in the same proportion to ownership as the participation of motorboaters is to ownership of motorboats in the second grouping (motorboating, sailing).

From the Part IV Program Narrative, State of Montana, Montana Boating Safety Program, FFY 92 - Contract 11.01, the number of registered motorboats in 1985 was 35,662.

$$\frac{196,000 \text{ people participating}}{35,622 \text{ registered motorboats}} = \frac{179,200 \text{ participating}}{X \text{ canoes, kayaks, rafts}}$$

$$\frac{179,000}{5.5} = 32,545 \text{ canoes, kayaks, rafts}$$

This computation cannot be taken too seriously because of the obvious unverified assumptions upon which it relies. However, the result does not seem unreasonable. There does not seem to be a better way of making an estimate short of gathering empirical data.

16. See the Appendix for a copy of the copy of Section 23-2-401, The Smith River Management Act.

17. Price Waterhouse, Preliminary Report from the National Recreational Boating Survey - Executive Summary. See appendix. The 1.08% figure is a preliminary nationwide average and may be adjusted by the time the report is delivered to the Congress. It was provided by Sport Fishing Institute staff who have been in communication with congressional staff about this matter. The final report will contain data specific to each state. The final percentage for Montana will determine whether an increase in the allocation to the motorboat account can be justified.

18. 1988 Montana Statewide Comprehensive Outdoor Recreation Plan (SCORP), Figure 2, page 10.

19. *ibid.*

20. The state does require the registration of snowmobiles and off-highway-vehicles when they are used on public lands. Funds are used, in part, to provide recreational trails and services where agreement of the land owner has been secured. The registration decal is not a permit to use public lands. It assures that the fee in lieu property tax has been paid.

21. Several types of fishing licenses sold. They are:

- 1) Resident Season @ \$11, \$13 in 1993 (148,000 licenses);
- 2) Resident Fishing/Conservation Combination @ \$15 (license total included in #1 above);
- 3) Resident Sportsman Combination @ \$54, \$64 in 1994 (17,000 licenses);
- 4) Resident Senior/Disabled Fishing/Bird Combination @ \$4 (2400 licenses);
- 5) Nonresident Season @ \$40, \$45 in 1994 (21,750 licenses);
- 6) Nonresident Season/Conservation Combination @ \$45 (license total included in #5 above);
- 7) 2 Day Nonresident @ \$10 (145,000 licenses).



## X. Appendices

1. Study Plan and Schedule
2. Study Participants
3. S.B. 313, 52nd Legislature, "Water Policy Storage Act"
4. Montana Water Plan - Section: Water Storage, December 1990
5. 1992/93/94 Biennial Final Rule - State Park System User Fees
6. Federal Register 50 CFR Part 80  
Federal Aid in Sport Fish Restoration and Federal Aid in  
Wildlife Restoration Act
7. U.S. Fish and Wildlife Service Federal Aid Manual sections  
Federal Aid in Sport Fish Restoration Act (Dingell-  
Johnson Act)  
Federal Aid in Wildlife Restoration Act (Pittman-  
Robertson Act)
8. Memo - Balaz to Hyyppa, Subj. Federal Aid Information re SB  
313 Study, Dated December 10, 1991
9. Section 87-1-601, MCA, stipulates the use of state fish and  
game money.
10. Section 87-1-701, MCA, is the state's assent to the federal  
Dingell-Johnson (fisheries) bill which prohibits diversion of  
fees paid by anglers to other than fishing related purposes.
11. Section 87-1-708, MCA, is the state's assent to the federal  
Pittman-Robertson (wildlife) bill which prohibits diversion of  
fees paid by hunters to other than hunting related purposes.
12. Section 60-3-101, MCA, is the state's assent to federal law  
prohibiting diversion of gasoline taxes derived from vehicles  
using highways to non-highway related purposes.
13. Title 23, U.S.C., Section 126, Diversion, is the federal  
statute which prohibits diversion of highway related gas taxes  
to other than highway related purposes.
14. Section 60-3-201, MCA Distribution and use of proceeds of  
gasoline dealers' license tax. It stipulates the amount set  
aside for the state park motorboat account.

15. Fisheries Division, DFWP - "State Owned Reservoirs," is a narrative description of most of the reservoirs included in this study. It does not include projects for which a fisheries program has never been established because of the inability of the pools to support sport fishing.
16. Section 23-2-401, MCA, The Smith River Management Act

## APPENDIX 1



**Montana Department  
of  
Fish, Wildlife & Parks**



S T U D Y P L A N  
October 31, 1992

**RECREATIONAL USER FEE STUDY  
S.B. 313, Water Storage Policy Act - 52nd Legislature**

The study goal is to provide an objective analysis of user fee options in keeping with intent of S.B. 313.

The scope will comply with that outlined in S.B. 313 and the report may include other information or recommendations which contribute to its utility and completeness.

The study will rely on existing data. No field surveys or other methods of developing empirical information will be employed.

The study will be conducted "in house" and no consultant services will be used. Don Hyyppa, DFWP, will have the lead responsibility for writing the report and for coordinating the involvement of others. See the attached list of "Study Participants."

Oversight of the Water Policy Committee is welcome. Members of the committee will be asked to what degree they want to receive briefings, progress reports, draft materials or in other ways be involved with the project.

Preliminary information collection began during the summer of 1991. Work on the actual report will begin in early November 1991. The first draft of the complete report will be written by March 1, 1992, and the final draft will be ready for review by May 1, 1992.

The committee will have had ample opportunity to see the substance of the report prior to formal transmittal in late June 1992. The deadline is July 1, 1992. See the attached "Study Schedule" for more detail.

Publication of the final report will employ inexpensive layout and printing techniques.

#####

S T U D Y S C H E D U L E

October 31, 1992

**RECREATIONAL USER FEE STUDY**  
**S.B. 313, Water Storage Policy Act - 52nd Legislature**

TASK	[--1991--][-----1992-----]							
	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN
Gather, study existing information, identify additional info needs		XXX						
Develop report format, begin writing introductory and informational text		XXX						
Receive additional data and evaluate			XXX					
Consider possible additional fee options			XXXX					
Rough out evaluation of each fee option and get agency review				XXXXXX				
Assemble first draft of report by March 1					XXXXXX			
DFWP And DNRC review (EQC and Committee?)						XXXX		
Prepare final draft by May 1							XXXXXX	
Final draft review DFWP, DNRC, (EQC and Committee?)								XXX
Final edit and layout								XX
Final printing								XXX
Submit Report by July 1								X
<b>Add Committee reporting dates and FWP Commission report if needed</b>								

#####

## APPENDIX 2





S T U D Y P A R T I C I P A N T S

November 1, 1992

RECREATIONAL USER FEE STUDY  
S.B. 313, Water Storage Policy Act - 52nd Legislature

LEGISLATIVE WATER POLICY COMMITTEE

HOUSE MEMBERS

Hal Harper, Chair  
Vivian Brooke  
Russell Fagg  
Tom Lee

SENATE MEMBERS

Esther Bengston, Vice Chair  
Larry Stimatz  
Tom Beck  
Lorents Grosfield

COMMITTEE STAFF SUPPORT

Michael Kakuk  
Environmental Researcher/Attorney  
Environmental Quality Council  
Room 106, State Capitol  
444-3742

GOVERNOR'S OFFICE LIAISON

K.L. Cool, Director, DFWP  
Karen Barclay, Director, DNRC

DNRC CONTACT

Curt Martin, primary contact

DFWP STAFF ROLES

Don Hyyppa - has lead, writes report - 444-4745  
Pat Graham - Deputy Director, in charge  
Jeff Tiberi - primary contact in Parks Division  
Chris Hunter - primary contact in Fisheries Division  
Steve Joppa - listing of dams, capital costs, etc.  
Bobbie Balaz - compliance with federal programs

#####



## APPENDIX 3



*Frank*

SENATE BILL NO. 313

1 INTRODUCED BY GROSFIELD, NOBLE, SCRYE, SEPPLE,  
 2 BENGTSON, GILBERT, ELLISON, MAZUREK, SWYGOOD, SVRCEK,  
 3 THOFT, HOCKETT, T. BECK, HARPER, ZOOK, STIMATZ,  
 4 AKLESTAD, YELLOWTAIL, WILLIAMS, KOEHNKE  
 5 BY REQUEST OF THE GOVERNOR  
 6  
 7

8 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING STATE WATER  
 9 STORAGE POLICY AND THE ROLE OF STORAGE IN SOLVING WATER  
 10 PROBLEMS; ESTABLISHING GUIDELINES FOR SETTING PRIORITIES  
 11 AMONG NEW STORAGE AND REHABILITATION STORAGE PROJECTS;  
 12 REQUIRING A STUDY OF THE FEASIBILITY OF ASSESSING  
 13 RECREATIONAL USER FEES TO REPAY WATER STORAGE PROJECT COSTS;  
 14 REQUIRING A STUDY OF THE FEASIBILITY OF INCREASING HARPER  
 15 USER PAYMENT FOR CONSTRUCTION AND REHABILITATION OF  
 16 STORAGE PROJECTS AND IMPROVING SERVICE TO USERS WHO  
 17 BENEFIT FROM THE DEVELOPMENT OF NEW STATE-OWNED WATER  
 18 STORAGE PROJECTS OR FROM THE REHABILITATION OF EXISTING  
 19 STATE-OWNED WATER STORAGE PROJECTS; REQUIRING A STUDY OF  
 20 WATER STORAGE LAWS AND REGULATIONS BY THE WATER POLICY  
 21 COMMITTEE; CREATING A WATER STORAGE STATE SPECIAL REVENUE  
 22 ACCOUNT; ALLOCATING ADDITIONAL GRAB-SEVERANCE RESERVE  
 23 REVENUE TO TAX REVENUES FOR WATER DEVELOPMENT;  
 24  
 25

1 ALLOCATING 25% OF THE MONEY AVAILABLE AS GRANTS IN THE WATER  
 2 DEVELOPMENT STATE SPECIAL REVENUE ACCOUNT AND RENEWABLE  
 3 RESOURCE DEVELOPMENT ACCOUNT TO THE DEVELOPMENT OF WATER  
 4 STORAGE PROJECTS; ELIMINATING THE 10-YEAR LIMIT ON PROJECT  
 5 DEVELOPMENT PLANS REQUIRED IN APPLICATIONS FOR LARGE WATER  
 6 USE PERMITS; AMENDING SECTIONS 15-35-1087 AND 15-38-2827  
 7 85-1-6837 85-1-604, 85-2-310, AND 90-2-111, MCA; AND  
 8 PROVIDING AN EFFECTIVE DATE."

STATEMENT OF INTENT

9  
 10  
 11 A statement of intent is required for this bill to  
 12 provide guidance in the preparation of rules and other  
 13 matters pertaining to the allocation of grants and loans  
 14 from the water storage state special revenue account. This  
 15 bill is introduced as a result of and should be interpreted  
 16 consistently with the 1990 state water plan section on water  
 17 storage. It is the legislature's intent that money may not  
 18 be expended from the water storage state special revenue  
 19 account during fiscal years 1992 and 1993. Rather, money  
 20 deposited in the account is to accumulate for expenditure  
 21 during fiscal years 1994 and 1995. Deposits to the account  
 22 are to be placed in short-term investments and accrue  
 23 interest, which is also to be deposited in the water storage  
 24 state special revenue account.  
 25 Rules are to be adopted and implemented that govern the



1 process of application, administrative application review  
 2 and ranking, and conditions for the disbursement of grants and  
 3 loans as soon as possible after this bill is enacted.  
 4 Applications for grants and loans from the account are to be  
 5 accepted by May 1992. These application and administrative  
 6 recommendations will be considered during the 1993  
 7 legislative session, and that legislature may appropriate  
 8 money accumulated in the account for expenditure during  
 9 fiscal years 1994 and 1995.

10 It is also the legislature's intent that rules governing  
 11 the allocation of money from the water storage state special  
 12 revenue account do not limit the amount that may be provided  
 13 to any one applicant. Also, private entities, as well as  
 14 public entities, are to be eligible for grants and loans  
 15 from the account.

16  
 17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18 NEW SECTION. Section 1. Short title. [Sections 1  
 19 through 4] may be cited as the "Water Storage Policy Act".

20 NEW SECTION. Section 2. Purpose. The purpose of  
 21 [sections 1 through 4] is to define the role of water  
 22 storage in solving water management problems and, if water  
 23 storage projects provide the best solutions to those  
 24 problems, to facilitate the development of the projects.

25 NEW SECTION. Section 3. Water storage policy. (1) The

1 legislature recognizes that water resource needs are  
 2 growing, existing water facilities are aging and in need of  
 3 repair, and new water storage projects have become more  
 4 difficult to complete. Other types of action will be needed  
 5 to solve many emerging problems, but if water storage is the  
 6 best way to meet growing water needs and solve problems,  
 7 then it should be actively pursued.

8 (2) In determining the best solution for a particular  
 9 water management problem, the state shall:

- 10 (a) carefully define the problem;
- 11 (b) identify all options to solve the problem,  
 12 including water storage;
- 13 (c) determine whether water is physically and legally  
 14 available to solve the problem; and
- 15 (d) select the option that best meets the following  
 16 criteria:

- 17 (i) technical feasibility;
- 18 (ii) financial feasibility;
- 19 (iii) economic feasibility;
- 20 (iv) political feasibility;
- 21 (v) legal feasibility; and
- 22 (vi) environmental feasibility.

23 NEW SECTION. Section 4. Prioritization of water  
 24 storage projects -- governor's report. (1) The governor  
 25 shall submit to each regular session of the legislature a

1 report identifying specific water storage projects proposed  
 2 for development, including the rehabilitation of existing  
 3 projects and new project proposals. The report must contain:  
 4 (a) a list of water storage project priorities;  
 5 (b) an implementation strategy for each priority  
 6 project that identifies the resources (including specific  
 7 budget requests), government actions, and other actions  
 8 needed to accomplish the project; and  
 9 (c) a progress report on the development of water  
 10 storage projects during the previous 2 years.  
 11 (2) In setting priorities among new water storage  
 12 projects, the governor shall consider whether a project:  
 13 (a) solves a severe water problem;  
 14 (b) provides multiple uses and benefits;  
 15 (c) provides for public uses;  
 16 (d) shows strong evidence of broad citizen support;  
 17 (e) is able to obtain nonstate sources of funding;  
 18 (f) protects and seeks to enhance social, ecological,  
 19 cultural, and aesthetic values;  
 20 (g) improves local and state economic development;  
 21 (h) could resolve Indian and federal reserved water  
 22 rights issues;  
 23 (i) supports water conservation activities; and  
 24 (j) promotes the use of water reserved under Montana  
 25 law.

1 (3) In setting priorities among water storage  
 2 rehabilitation projects, the governor shall consider whether  
 3 the project:  
 4 (a) is needed to protect public safety;  
 5 (b) has impacts if not repaired or rehabilitated; and  
 6 (c) accomplishes the goals listed in subsections (2)(a)  
 7 through (2)(j).  
 8 (4) In establishing budget priorities for the  
 9 allocation of state water storage development funds:  
 10 (a) first preference must be given to projects that  
 11 resolve threats to life and property posed by high-hazard  
 12 facilities that are in an unsafe condition;  
 13 (b) second preference must be given to projects that  
 14 improve or expand existing water storage facilities; and  
 15 (c) third preference must be given to the planning and  
 16 construction of new water storage facilities.  
 17 NEW SECTION. Section 5. Study of recreational user  
 18 fees. (1) The department of fish, wildlife and parks, with  
 19 the cooperation of the department of natural resources and  
 20 conservation, shall conduct and coordinate a study that  
 21 assesses the feasibility of charging recreational  
 22 beneficiaries of water storage projects fees to assist in  
 23 the repayment of a portion of those project development  
 24 costs associated with environmental~~reggation~~~~or~~  
 25 ~~enhancement~~~~and~~~~increased~~ recreational opportunities.

1 Options to be assessed include but are not limited to:

2 (a) requiring entrance fees for the recreational use of

3 water storage facilities;

4 (b) requiring purchase of a water development stamp as

5 a prerequisite for purchase of a fishing, duck hunting,

6 boating, or other license for which water is an integral

7 part of the recreational experience;

8 (c) increasing the motorboat fuels tax;

9 (d) requiring purchase of a land and water conservation

10 license by anyone using public lands or water; and:

11 (e) obtaining funding from the department of fish,

12 wildlife and parks that is derived from taxes or fees on

13 recreational activities.

14 (2) A written report of the study findings must be

15 submitted to the water policy committee by July 1, 1992.

16 NEW SECTION: SECTION 6. STUDY OF WATER USER FEES. (1)

17 THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION SHALL

18 CONDUCT AND COORDINATE A STUDY TO ASSESS THE FEASIBILITY OF

19 INCREASING THE FEES CHARGED TO DIVERSIONARY WATER USERS TO

20 ASSIST IN THE REPAYMENT OF A GREATER PORTION OF NEW

21 STATE-OWNED WATER STORAGE PROJECTS' REHABILITATION COSTS.

22 THIS STUDY SHOULD INCLUDE A HISTORICAL ANALYSIS OF EXISTING

23 STATE-OWNED WATER STORAGE PROJECTS' COSTS AND ASSOCIATED

24 FEES.

25 (2) A WRITTEN REPORT OF THE STUDY FINDINGS MUST BE

26 SUBMITTED TO THE WATER POLICY COMMITTEE BY JULY 1, 1992.

27 NEW SECTION. Section 7. Study of dam safety and water

28 reservation laws and regulations. (1) The water policy

29 committee, with the cooperation of the department of natural

30 resources and conservation, shall conduct a study of the

31 Montana Dam Safety Act and implementing regulations to



1 determine:

2 (a) the acceptable degree of risk to public safety and

3 the appropriate allocation of responsibility for that risk

4 among the public, government, and dam owners;

5 (b) whether the definition of a high-hazard dam should

6 be modified;

7 (c) whether the high-hazard dam classification should

8 be expanded into a risk scale that allows structural design

9 requirements to reflect probable risk to life and property;

10 and

11 (d) whether the department of natural resources and

12 conservation should be given greater discretion to

13 substitute alternative means of addressing risks, such as

14 early warning systems, for structural design requirements.

15 (2) The water policy committee shall also conduct a

16 study to determine whether the statutory restriction against

17 allowing private entities to obtain water reservations is an

18 impediment to the development of water storage projects.

19 Specifically, the study must evaluate the desirability of:

20 (a) allowing private entities to apply for and obtain

21 water reservations; and

22 (b) designating a public entity with responsibility to

23 advance water reservation applications for private entities

24 that are precluded from applying for and receiving a water

25 reservation under 85-2-316.

1 NEW SECTION. Section 8. Water storage state special

2 revenue account created -- revenues allocated --

3 appropriations from account. (1) There is a water storage

4 state special revenue account within the state special

5 revenue fund established in 17-2-102.

6 (2) There must be paid into the water storage state

7 special revenue account:

8 (a) money from the water development state special

9 revenue account as provided in 85-1-604; AND

10 (b) money from the renewable resource development

11 account as provided in 90-2-1117-and-

12 ~~for--money--from--the--resource--indemnity--trust--fund--in~~

13 ~~excess--of--the--\$100-million--minimum--balance--as--provided--in~~

14 ~~15-30-202.~~

15 (3) Money that was not encumbered or expended from the

16 water storage state special revenue account during the

17 previous biennium must remain in the account.

18 (4) The purpose of the water storage state special

19 revenue account is to provide money for loans and grants

20 exclusively for water storage projects, including the

21 purchase or lease of property; planning, feasibility, and

22 design studies; and other costs related to construction,

23 rehabilitation, expansion, and modification of water storage

24 projects.

25 (5) The department shall administer this section as an

1 Integral part of the water development program, using, to  
 2 the extent possible, the same procedures for soliciting,  
 3 determining eligibility, and rating water storage project  
 4 proposals and for administering grants and loans, subject to  
 5 the same limitations, as applied to other water development  
 6 grants and loans.  
 7 (6) The following preferences must be considered in  
 8 ranking proposals for water storage grants and loans:  
 9 (a) first preference is for the rehabilitation of water  
 10 storage projects that resolve threats to life and property;  
 11 (b) second preference is for the improvement or  
 12 expansion of existing water storage projects; and  
 13 (c) third preference is for the development of new  
 14 water storage projects.  
 15 Section 87--Section 15-35-108-MCA-is amended-to read:  
 16 45-35-108--(Temporary)--Disposal--of--sewerage--taxes  
 17 Sewerage--taxes--collected--under--this--chapter--must--be  
 18 allocated--according--to--the--provisions--in--effect--on--the--date  
 19 the--tax--is--due--under--15-35-104--Sewerage--taxes--collected  
 20 under--the--provisions--of--this--chapter--are--allocated--as  
 21 follows:  
 22 (1) 20--the--trust--fund--created--by--Article--IX--section--57  
 23 of--the--Montana--constitution--50%--of--total--coal--sewerage--tax  
 24 collections--The--trust--fund--money--shall--be--deposited--in--the  
 25 fund--established--under--17-6-203(5)--and--invested--by--the--board

1 of investments as provided by law  
 2 (2) Starting July 1, 1987, and ending--done--30--1993  
 3 12%--of--coal--sewerage--tax--collections--are--allocated--to--the  
 4 highway--reconstruction--trust--fund--account--in--the--state  
 5 special--revenue--fund  
 6 (3) Coal--sewerage--tax--collections--remaining--after--the  
 7 allocations--provided--by--subsections--(1)--and--(2)--are  
 8 allocated--in--the--following--percentages--of--the--remaining  
 9 balance--  
 10 (a) 37.5%--to--the--credit--of--the--local--impact--account  
 11 (b) 30%--to--the--state--special--revenue--fund--for--water  
 12 (c) 1%--to--the--state--special--revenue--fund--to--the--credit  
 13 (d) 1.4%--to--the--credit--of--the--renewable--resource  
 14 development--bond--fund;  
 15 (e) 5%--to--a--nonexpendable--trust--fund--for--the--purpose--of  
 16 parks--acquisition--or--management--protection--of--works--of--  
 17 in--the--state--capitol--and--other--cultural--and--aesthetic  
 18 projects--income--from--this--trust--fund--shall--be--appropriated  
 19 as--follows:  
 20  
 21  
 22  
 23  
 24  
 25

1 (f) 1/3 for protection of works of art in the state  
 2 Capitol and other cultural and aesthetic projects; and  
 3 (f) 2/3 for the acquisition and development of operation  
 4 and maintenance of any sites and areas described in  
 5 23-1-1827.  
 6 (f) 1 to the state special revenue fund to the credit  
 7 of the state library commission for the purposes of  
 8 providing basic library services for the residents of all  
 9 counties through library federations and for payment of the  
 10 costs of participating in regional and national networking;  
 11 (g) 1/2 of 1 to the state special revenue fund for  
 12 conservation districts;  
 13 (h) 1 1/4 2 1/2 to the debt service fund type to the  
 14 credit of the water development debt service fund;  
 15 (i) 2 to the state special revenue fund for the  
 16 Montana Growth Through Agriculture Act;  
 17 (j) all other revenues from severance taxes collected  
 18 under the provisions of this chapter to the credit of the  
 19 general fund of the state. (Merrinates duty 1993 sec 77  
 20 Ch. 5417-b-19037)  
 21 15-35-1007 effective duty 1993. Bisposit of  
 22 severance taxes. Severance taxes collected under this  
 23 chapter must be allocated according to the provisions in  
 24 effect on the date the tax is due under 15-35-104. Severance  
 25 taxes collected under the provisions of this chapter are

1 allocated as follows:

2 (f) 1 to the trust fund created by Article IX, section 57  
 3 of the Montana constitution. 50% of total coal severance tax  
 4 collections. The trust fund moneys shall be deposited in the  
 5 fund established under 17-6-203(5) and invested by the board  
 6 of investments as provided by law.  
 7 (g) 1 to severance tax collections remaining after  
 8 allocation to the trust fund under subsection (f) are  
 9 allocated in the following percentages of the remaining  
 10 balance:  
 11 (a) 17.5% to the credit of the local impact account  
 12 in encumbered funds remaining in the local impact account ac  
 13 the end of each biennium are allocated to the state special  
 14 revenue fund for state equalization aid to public schools of  
 15 the state.  
 16 (b) 30% to the state special revenue fund for state  
 17 equalization aid to public schools of the state.  
 18 (c) 1 to the state special revenue fund to the credit  
 19 of the county land planning account.  
 20 (d) 1 1/4 to the credit of one renewable resource  
 21 development bond fund;  
 22 (e) 5% to a nonexpendable trust fund for the purpose of  
 23 parks acquisition or management. Protection of works of art  
 24 in the state. Capitol and other cultural and aesthetic  
 25 projects. Income from this trust fund shall be appropriated

1 as follows:

2 (f) for protection of works of art in the state

3 capital and other cultural and aesthetic projects and

4 (f) for the acquisition of development operations

5 and maintenance of any sites and areas described in

6 23-1-1027.

7 (f) for the state special revenue fund to the credit

8 of the state library commission for the purposes of

9 providing basic library services for the residents of all

10 counties through library federations and for payment of the

11 costs of participating in regional and national networking;

12 (g) 1/2 of the state special revenue fund for

13 conservation districts;

14 (h) 1/4 of the debt service fund type to the

15 credit of the water development debt service fund;

16 (i) for the state special revenue fund for the

17 Montana Growth Through Agriculture Act;

18 (j) all other revenues from severance taxes collected

19 under the provisions of this chapter to the credit of the

20 general fund of the state.

21 Section 9-30-202, MCA, is amended to read:

22 45-30-202 Investment of resource indemnity trust fund

23 expenditure - minimum balance - (i) All money paid into

24 the resource indemnity trust fund including money payable

25 into the fund under the provisions of 15-37-117 shall be

1 invested at the discretion of the board of investments. All

2 the net earnings accruing to the resource indemnity trust

3 fund shall annually be added to the trust fund until it has

4 reached the sum of \$10 million. Thereafter only the net

5 earnings may be appropriated and expended until the fund

6 reaches \$10 million. Thereafter all net earnings and all

7 receipts shall be appropriated by the legislature and

8 expended provided that the balance in the fund may never be

9 less than \$10 million.

10 (f) At the beginning of each biennium there is

11 allocated from the interest income of the resource indemnity

12 trust fund:

13 (i) an amount not to exceed \$175,000 to the

14 environmental contingency account pursuant to the conditions

15 of 75-1-1017 and

16 (ii) beginning in fiscal year 1992 an amount not to

17 exceed \$50,000 to the oil and gas production damage

18 mitigation account pursuant to the conditions of 02-11-1617.

19 (b) The remainder of the interest income is allocated

20 as follows:

21 (i) Beginning in fiscal year 1992 provided the amount

22 in the resource indemnity trust fund is greater than \$10

23 million 30% of the interest income of the resource

24 indemnity trust fund must be allocated to the water

25 development state special revenue account created by

1 05-1-604-

2 (i) Beginning in fiscal year 1987-88 of the interest

3 income of the resource indemnity trust fund must be

4 allocated to the hazardous waste/GBRA special revenue

5 account provided for in 75-10-621-

6 (ii) Beginning in fiscal year 1997-98 of the interest

7 income from the resource indemnity trust fund must be

8 allocated to the renewable resource development account

9 provided for in Title 90-2-104-

10 (v) Beginning in fiscal year 1997-98 of the interest

11 income from the resource indemnity trust fund must be

12 allocated to the reclamation and development grants account

13 provided for in 90-2-104-

14 (v) Beginning in fiscal year 1997-98 of the interest

15 income of the resource indemnity trust fund must be

16 allocated to the environmental quality protection fund

17 provided for in 75-10-704-

18 (vi) Beginning in fiscal year 1994-95 of the receipts

19 in the resource indemnity trust fund in excess of the \$100

20 million minimum balance must be allocated to the water

21 storage state special revenue account provided for in

22 (section 2) -

23 (j) Any format budget document prepared by the

24 legislature or the executive branch that proposes to

25 appropriate funds from the resource indemnity trust interest

1 account other than as provided for by the allocations in

2 subsection (j) must specify the amount of money from each

3 allocation that is proposed to be diverted and the proposed

4 use of the diverted funds. A format budget document includes

5 a printed and publicly distributed budget proposal or

6 recommendation introduced by or a bill developed

7 during the legislative appropriation process or otherwise

8 during a legislative session.

9 Section 07-Section 05-1-6037-HEA is amended to read:

10 "05-1-6037- Water development debt service fund - created

11 - coal severance tax allocated - water development loan

12 loss reserve fund created - (j) - there is created a water

13 development debt service fund within the debt service fund

14 type established in 17-2-102-

15 (b) The state pledges and allocates and directs to be

16 credited to the water development debt service fund as

17 received:

18 (i) 1% of 2-1724 of all money from time to time

19 received from the coal severance tax collected under Title

20 15-Chapter 357 and remaining after allocation of such tax

21 under 15-35-100(i) and (j);

22 (ii) any principal and accrued interest under

23 05-1-613 (3)(a) received in repayment of a loan made from the

24 proceeds of bonds issued under 05-1-017-

25 (iii) all interest income earned on proceeds of water

1 development-bonds?  
 2 (f) revenue or money otherwise required to be paid into  
 3 the water development state special revenue account pursuant  
 4 to 85-1-604 as determined by the board of examiners in  
 5 connection with the issuance of bonds pursuant to 85-1-617  
 6 and  
 7 (v) money received from the water development loan loss  
 8 reserve fund as the result of a loan loss;  
 9 (2) (a) there is created a water development loan loss  
 10 reserve fund within the debt service fund type established  
 11 in 17-2-102;  
 12 (b) the state pledges and allocates and directs to be  
 13 credited to the water development loan loss reserve fund all  
 14 accrued interest under 85-1-613 (3) (b) received in repayment  
 15 of a loan made from the proceeds of bonds issued under  
 16 85-1-617;  
 17 (c) if the department determines that a loan loss has  
 18 occurred on a loan made pursuant to this part, funds from  
 19 the water development loan loss reserve fund must be  
 20 transferred to the water development debt service fund in an  
 21 amount equal to the amount that would otherwise be available  
 22 for debt service under subsection (1) (b) as a result of the  
 23 loan loss;  
 24 Section 9, Section 85-1-604, MCA, is amended to read:  
 25 "85-1-604. Water development state special revenue

1 account created -- revenues allocated -- limitations on  
 2 appropriations from account. (1) There is created a water  
 3 development state special revenue account within the state  
 4 special revenue fund established in 17-2-102.  
 5 (2) Except to the extent that they are required to be  
 6 credited to the water development debt service fund pursuant  
 7 to 85-1-603, there shall be paid into the water development  
 8 state special revenue account:  
 9 (a) all revenues of the works and other money as  
 10 provided in 85-1-332;  
 11 (b) 30% of the interest income of the resource  
 12 indemnity trust fund as provided in and subject to the  
 13 conditions of 15-38-202;  
 14 (c) the excess of the coal severance tax proceeds  
 15 allocated by 85-1-603 to the water development debt service  
 16 fund above debt service requirements as provided in and  
 17 subject to the conditions of 85-1-619; and  
 18 (d) any fees or charges collected by the department  
 19 pursuant to 85-1-616 for the servicing of loans, including  
 20 arrangements for obtaining security interests.  
 21 (3) Appropriations may be made from the water  
 22 development state special revenue account for the following  
 23 purposes and subject to the following conditions:  
 24 (a) An amount less than or equal to that paid into the  
 25 account under 85-1-332 and only that amount may be

1 appropriated for the operation and maintenance of  
 2 state-owned projects and works. If the amount of money  
 3 available for appropriation under this subsection (3)(a) is  
 4 greater than that necessary for operation and maintenance  
 5 expenses, the excess may be appropriated as provided in  
 6 subsection (3)(b).  
 7 (b) An amount less than or equal to that paid into the  
 8 account from the resource indemnity trust account plus any  
 9 excess from subsection (3)(a) and only that amount may be  
 10 appropriated from the account for:  
 11 (1) the rehabilitation of state-owned projects and  
 12 works, including the rehabilitation of spillways of  
 13 state-owned dams;  
 14 (ii) the formulation of downstream emergency warning and  
 15 evacuation plans for state-owned dams;  
 16 (iii) the development of the hydropower potential of  
 17 state-owned dams;  
 18 (iv) assistance in the implementation of the water  
 19 reservations established under 85-2-316 of conservation  
 20 districts;  
 21 (v) the promotion of the development of offstream and  
 22 tributary storage;  
 23 (vi) the promotion of joint state-tribal, state-federal,  
 24 and state-tribal-federal water development;  
 25 (vii) projects or programs that improve water use

1 efficiency, including development of new, efficient water  
 2 systems and rehabilitation of older, less efficient water  
 3 systems;

4 (viii) administrative expenses, including but not  
 5 limited to the salaries and expenses of personnel,  
 6 equipment, office space, and other necessities incurred in  
 7 the administration of the water development program except  
 8 the administration of loans and grants; and  
 9 (ix) any other expenditures that meet the policies and  
 10 objectives of the state water development program.

11 (c) An amount less than or equal to that paid into the  
 12 account from the sources provided for in (c) and (d) of  
 13 subsection (2) and only that amount may be appropriated from  
 14 the account for loans and grants for water development  
 15 projects and activities; for purchase of liens and operation  
 16 of property as provided in 85-1-615; for administrative  
 17 expenses, including but not limited to the salaries and  
 18 expenses of personnel, equipment, and office space; for the  
 19 servicing of loans, including arrangements for obtaining  
 20 security interests; and for other necessities incurred in  
 21 administering the loans and grants.

22 (4) An amount equal to 25% of the money available for  
 23 grants under subsection (3)(c) must be transferred to the  
 24 water storage state special revenue account created in  
 25 Section 7 81."

1           **Section 10.** Section 85-2-310, MCA, is amended to read:  
2           **"85-2-310.** Action on application. (1) The department  
3 shall grant, deny, or condition an application for a permit  
4 in whole or in part within 120 days after the last date of  
5 publication of the notice of application if no objections  
6 have been received and within 180 days if a hearing is held  
7 or objections have been received. However, in either case  
8 the time may be extended upon agreement of the applicant,  
9 or, in those cases where an environmental impact statement  
10 must be prepared or in other extraordinary cases, not more  
11 than 60 days upon order of the department. If the department  
12 orders the time extended, it shall serve a notice of the  
13 extension and the reasons therefor by certified mail upon  
14 the applicant and each person who has filed an objection as  
15 provided by 85-2-308.  
16           (2) However, an application may not be approved in a  
17 modified form or upon terms, conditions, or limitations  
18 specified by the department or denied, unless the applicant  
19 is first granted an opportunity to be heard. If no objection  
20 is filed against the application but the department is of  
21 the opinion that the application should be approved in a  
22 modified form or upon terms, conditions, or limitations  
23 specified by it or that the application should be denied,  
24 the department shall prepare a statement of its opinion and  
25 the reasons therefor. The department shall serve a statement

1 of its opinion by certified mail upon the applicant,  
2 together with a notice that the applicant may obtain a  
3 hearing by filing a request therefor within 30 days after  
4 the notice is mailed. The notice shall further state that  
5 the application will be modified in a specified manner or  
6 denied, unless a hearing is requested.  
7           (3) The department may cease action upon an application  
8 for a permit and return it to the applicant when it finds  
9 that the application is not in good faith or does not show a  
10 bona fide intent to appropriate water for a beneficial use.  
11 An application returned for any of these reasons shall be  
12 accompanied by a statement of the reasons for which it was  
13 returned, and there shall be no right to a priority date  
14 based upon the filing of the application. Returning an  
15 application pursuant to this subsection shall be deemed a  
16 final decision of the department.  
17           (4) For all applications filed after July 1, 1973, the  
18 department shall find that an application is not in good  
19 faith or does not show a bona fide intent to appropriate  
20 water for a beneficial use if:  
21           (a) an application is not corrected and completed as  
22 required by 85-2-302;  
23           (b) the appropriate filing fee is not paid;  
24           (c) the application does not document:  
25           (i) a beneficial use of water;



1 (ii) the proposed place of use of all water applied for;  
 2 (iii) for an appropriation of 4,000 acre-feet a year or  
 3 more and 5.5 cubic feet per second or more, a detailed  
 4 project plan describing when and how much water will be put  
 5 to a beneficial use. The project plan must include a  
 6 reasonable time ~~line--not-to-exceed-10-years--from--the--time~~  
 7 ~~of--issuance--of-a-permit~~ for the completion of the project  
 8 and the actual application of the water to a beneficial use.  
 9 (iv) for appropriations not covered in subsection  
 10 (4)(c)(iii), a general project plan stating when and how  
 11 much water will be put to a beneficial use; and  
 12 (v) if the water applied for is to be appropriated  
 13 above that which will be used solely by the applicant or if  
 14 it will be marketed by the applicant to other users,  
 15 information detailing:  
 16 (A) each person who will use the water and the amount  
 17 of water each person will use;  
 18 (B) the proposed place of use of all water by each  
 19 person;  
 20 (C) the nature of the relationship between the  
 21 applicant and each person using the water; and  
 22 (D) each firm contractual agreement for the specified  
 23 amount of water for each person using the water; or  
 24 (d) the appropriate environmental impact statement fee,  
 25 if any, is not paid as required by 85-2-124."

1 **Section 11.** Section 90-2-111, MCA, is amended to read:

2 **"90-2-111. Grants to state and local government.** (1)  
 3 The department of natural resources and conservation may  
 4 recommend to the governor that grants from the renewable  
 5 resource development account provided for by this part be  
 6 made to any department, agency, board, commission, or other  
 7 division of state government or to any political subdivision  
 8 of state government.  
 9 (2) The department shall solicit and consider in its  
 10 evaluation of proposed projects the views of interested and  
 11 affected departments, boards, agencies, and other  
 12 subdivisions of state and federal government and of other  
 13 interested and affected persons.  
 14 (3) The governor shall submit those grant proposals  
 15 having his approval to the legislature by the 20th day of  
 16 any legislative session. Those grant proposals approved by  
 17 the legislature shall be administered by the department.  
 18 (4) The grants provided for by this section may be made  
 19 for the purchase, lease, or construction of projects for the  
 20 conservation, management, utilization, development, or  
 21 preservation of the land, vegetation, fish, wildlife,  
 22 recreational, and other renewable resources in the state;  
 23 for the purpose of feasibility and design studies for such  
 24 projects; for development of plans for the rehabilitation,  
 25 expansion, or modification of existing projects; and for

1 such other and further similar purposes as the legislature  
2 may approve.

3 (5) In recommending grants under this section, the  
4 department and the governor shall consider the special  
5 requirements and benefits of proposals that provide for the  
6 long-term compilation and management of information on the  
7 natural resources of Montana. These proposals contribute to  
8 the efficient management of renewable resources, benefit a  
9 variety of public and private users, and require a  
10 continuing commitment of resources to maintain currency and  
11 utility. In consequence of these values and conditions,  
12 projects providing for the long-term compilation and  
13 management of natural resource information may be considered  
14 for funding in consecutive funding cycles and may not be  
15 penalized for having received funds previously from the  
16 renewable resource development program.

17 (6) An amount equal to 25% of the money available for  
18 grants from the renewable resource development program must  
19 be transferred to the water storage state special revenue  
20 account created in [section 7 8].

21 (7) The department may adopt rules as required to  
22 govern the terms and conditions for making grants pursuant  
23 to this section."

24 NEW SECTION. Section 12. Codification instruction. (1)  
25 [Sections 1 through 4] are intended to be codified as an

1 integral part of Title 85, chapter 1, and the provisions of  
2 Title 85, chapter 1, apply to [sections 1 through 4].

3 (2) [Section 7 8] is intended to be codified as an  
4 integral part of Title 85, chapter 1, part 6, and the  
5 provisions of Title 85, chapter 1, part 6, apply to [section  
6 7 8].

7 NEW SECTION. Section 13. Effective date. (This act) is  
8 effective July 1, 1991.

DESCRIPTION OF PROPOSED LEGISLATION:

This bill does the following:


1. clarifies state water storage policy and the role of storage in solving water problems;
2. establishes guidelines for setting priorities among new storage and rehabilitation storage projects;
3. requires a study of the feasibility of assessing recreational user fees to repay water storage project costs;
4. requires a study of water storage laws and regulations by the water policy committee;
5. creates a water storage state special revenue account;
6. allocates additional coal severance and resource indemnity trust tax revenues for water development;
7. allocates 25% of the money available as grants in the water development state special revenue account and renewable resource development account to the development of water storage projects; and
8. eliminates the 10-year limit on project development plans required in applications for large water use permits.

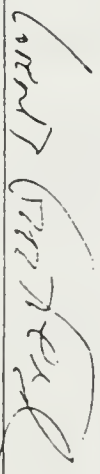
ASSUMPTIONS:

1. The proposal will have no effect on the distribution of RITT until FY94.
2. Coal severance tax receipts will be \$38,595,000 and \$37,109,000 in FY92 and FY93 respectively. (OBPP)
3. RITT receipts will be \$4,894,000 in FY94. (OBPP)
4. The RITT will reach \$100 million during FY96.
5. No water storage projects will be funded in the 1993 biennium.
6. The study to assess the feasibility of charging fees to recreational beneficiaries of water storage projects will be done by a private contractor. The Department of Fish, Wildlife and Parks estimates the cost to be approximately \$90,000.

FISCAL IMPACT:

see next page

  
ROD SUNDSTED, BUDGET DIRECTOR  
Office of Budget and Program Planning  
DATE 2-15-91

  
LORENTS GROSFIELD, PRIMARY SPONSOR  
Fiscal Note for SB0313, as introduced  
DATE 2/18/91  
513 313

FISCAL IMPACT:

Department of Fish, Wildlife, and Parks:

Expenditures: Operating Costs Funding: State Special	FY 92			FY 93		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
	0	90,000	90,000	0	0	0
	0	90,000	90,000	0	0	0

Coal Severance Tax Distribution:

	FY 92			FY 93		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
General Fund	5,939,771	5,756,444	(183,327)	5,711,075	5,534,807	(176,268)
Conservation Districts	73,331	73,331	0	70,507	70,507	0
County Land Planning	146,661	146,661	0	141,014	141,014	0
Local Impact	2,566,568	2,566,568	0	2,467,749	2,467,749	0
Agricultural Growth	293,322	293,322	0	282,028	282,028	0
Public Schools	4,399,830	4,399,830	0	4,230,426	4,230,426	0
State Library	146,661	146,661	0	141,014	141,014	0
Renewable Resource	183,326	183,326	0	176,268	176,268	0
Parks Trust	733,305	733,305	0	705,071	705,071	0
Permanent Trust	19,297,500	19,297,500	0	18,554,500	18,554,500	0
Water Development	183,326	366,653	183,327	176,268	352,536	176,268
Highway Trust	<u>4,631,400</u>	<u>4,631,400</u>	<u>0</u>	<u>4,453,080</u>	<u>4,453,080</u>	<u>0</u>
Total	38,595,000	38,595,000	0	37,109,000	37,109,000	0

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Future costs to the Department of Fish, Wildlife and Parks and recreational users are dependent upon the results of the recreational benefit study  
 Beginning in FY94, 25% of RITT would be allocated to the water storage special state revenue account. The RIT trust cap of \$100 million is projected to be reached during FY96. When the cap is reached, 25% of the trust receipts would be deposited in the water storage account.

SB 313

Fiscal note shell: (attach cover page with financial data and send to accounting and finance)

Bill No. SB 313

Description of Proposed Legislation:

A bill for an act entitled: "An act clarifying state water storage policy and the role of storage in solving water problems; establishing guidelines for setting priorities among new storage and rehabilitation storage projects; requiring a study of the feasibility of assessing recreational user fees to repay water storage project costs; requiring a study of water storage laws and regulations by the water policy committee; creating a water storage state special revenue account; allocating additional coal severance and resource indemnity trust tax revenues for water development; allocating 25% of the money available as grants in the water development state special revenue account and renewable resource development account to the development of water storage projects; eliminating the 10-year limit on project development plan required in applications for large water use permits; amending sections 15-35-108, 15-38-202, 85-1-603, 85-1-604, 85-2-310, and 90-2-111, MCA; and providing an effective date."

Assumptions:

- A study to assess the feasibility of charging fees to recreational beneficiaries of water storage projects will be done by a private contractor similar to that done for the bioeconomics study, which cost over \$300,000.
- Feasibility components to be addressed in this study are: (1) require entrance fee, (2) requirement to purchase prerequisite water development stamp, (3) increase motorboat fuels tax, (4) require purchase of land and water conservation license, (5) obtain funding from DFWP through agency funding mechanism.
- This study will probably not be as complex as the bioeconomics study but will have substantial complexity in itself to address all the components.
- The study must be completed by July 1, 1992. An intensive study will be required.
- The study will not require extensive data collection.
- Some data on recreation fees, attitudes, etc. are already available from previous DFWP studies (Parks).
- There is no guarantee that the study will produce any revenue in FY 93.

Fiscal Impact:

- 1 senior consultant	4 mos. (640 hrs) @ \$75/hr.	= \$48,000
- Admin. Asst.	3 mos. (500 hrs) @ \$15/hr.	= \$ 7,500
- Operations (travel, phone, printing, etc.)		= \$ 3,000
- Data entry		= \$ 2,000
- Contractors overhead @ 50%		= <u>\$30,000</u>
		\$90,500

Affect on County or Other Local Revenue or Expenditures:

None

Long-Range Effects of Proposed Legislation:

The outcome of the recreational user fee study could determine whether recreationists pay to utilize water storage projects which are now free. The amount of the user fee, if any, may also have some effect on the willingness of recreationists to pay for these activities as well as the amount of funds which will be collected and made available to help pay for storage projects. The outcome of the study could be precedent setting.

Technical or Mechanical Defects or Conflicts with existing Legislation:

None

## APPENDIX 4





# MONTANA WATER PLAN

**FINAL**

December 1990

## Section: Water Storage

Introduction .....	2	Economic Value of Alternative Uses .....	12
The Role of Storage in Water Management .....	2	Plan Implementation .....	12
Subsection 1: Water Storage Policy .....	4	Legislative Action .....	12
Background .....	4	Administrative Action .....	13
Policy Statement .....	4	Financial Requirements and Funding Strategies ..	13
Issues, Options, and Recommendations .....	4	Subsection 3: Water Storage Regulations .....	14
Prioritizing New Projects .....	4	Background .....	14
Prioritizing Rehabilitation Projects .....	4	Policy Statement .....	14
Allocating State Funds .....	5	Issues, Options, and Recommendations .....	14
Plan Implementation .....	5	Duplicative Laws and Regulations .....	14
Legislative Action .....	5	Costs Related to Dam Safety .....	15
Administrative Action .....	6	Inability of Private Entities to Obtain	
Financial Requirements and Funding Strategies .....	6	Water Reservations .....	15
Subsection 2: Water Storage Financing .....	7	Lack of Information About Water Storage Laws ..	16
Background .....	7	Repairing Wilderness Area Dams .....	16
Policy Statement .....	8	Plan Implementation .....	17
Issues, Options, and Recommendations .....	8	Legislative Action .....	17
Information, Education, and Assistance .....	8	Administrative Action .....	17
State Water Resource Funding Programs .....	8	Financial Requirements and Funding Strategies ..	17
Cost-sharing and Coordination .....	10	Bibliography .....	19
Payment by Beneficiaries .....	11		

WATER RESOURCES DIVISION • DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

1520 EAST SIXTH AVENUE • HELENA, MONTANA 59620 - 2301 • (406) 444-6637

## INTRODUCTION

In this plan section, the term “water storage projects” includes the construction of new storage projects and the rehabilitation and expansion of existing facilities. The term also encompasses all three types of storage. Onstream storage refers to facilities that are located on a stream or river and impound only the natural flow of that stream or river. Onstream storage may be located on either mainstem rivers or tributary streams. Offstream storage refers to facilities where the primary water supply is diverted from another water course or storage facility. Finally, nonstructural storage refers to any nonstructural or management activity that affects the timing and flow of water in a natural water course (e.g., groundwater recharge, wetlands enhancement, and watershed management).

Water storage projects provide a variety of benefits to the state of Montana. Among them, reservoirs regulate stream flows for flood control; store water for irrigation, municipal, industrial, and stock water consumption; provide opportunities for flatwater recreation and improved fisheries; and supply water for hydropower generation. Storage facilities, however, can also adversely impact recreation and aquatic and riparian habitat associated with free flowing rivers and alter aesthetic views.

The first storage projects in Montana were built to supply water for mining operations. The homesteaders who followed relied upon small irrigation projects for agricultural development in Montana’s semi-arid climate. As the state’s population grew, so did the size, number, and variety of reasons for constructing water storage projects. By the 1980s, the Soil Conservation Service, the Bureau of Reclamation, the U.S. Army Corps of Engineers, and the Agriculture Stabilization and Conservation Service had combined with state and private entities to develop an estimated 11,000 reservoirs in Montana. Of these, 67 reservoirs store over 5,000 acre-feet of water, while two-thirds of the reservoirs are primarily for stockwater and hold less than 50 acre-feet.

The largest water storage projects (Fort Peck, Canyon Ferry, Hungry Horse, Yellowtail, Libby, and Tiber dams) were built by the federal government. These storage facilities are used for multiple purposes, including irrigation, flood control, hydropower production, and by recreationists who take advantage of the opportunity to swim, boat, fish, and water ski. The state owns several storage projects that were constructed in the 1930s and 1940s with financial assistance from the federal Public Works Administration. Other large dams are single-purpose hydropower facilities owned by private utilities such as the Montana Power Company. A few reservoirs larger than

5,000 acre-feet were built by private groups for irrigation purposes.

It is clear that water storage has and will continue to solve many water resource problems in Montana. However, its applicability is limited by several factors, including the availability of water, technical feasibility, environmental impacts, and funding.

The planning, construction, operation, maintenance, and rehabilitation of water storage facilities is expensive. Water storage projects must often compete for scarce federal and state funds, and their priority must be determined in light of other water management activities.

## THE ROLE OF STORAGE IN WATER MANAGEMENT

Montana’s water management problems are diverse and vary according to site-specific conditions. No single water management tool (e.g., water storage, water use efficiency, water right transfers, or conservation) can effectively and efficiently solve all water management problems. The best water management tool for a particular problem should be selected through the following problem-solving process:

1. Define the problem. The water management problem must be adequately and appropriately defined by water users (including municipal, agricultural, recreational, industrial, commercial, and other appropriate users) and technical experts.
2. Identify all the options to solve the problem, including water storage. Potential water storage projects, both new and existing, could be identified: (1) by working with appropriate government agencies and water user groups to review, evaluate, and update existing lists of potential storage projects; and (2) during the process of developing basin-specific plans.
3. Determine whether water is physically and legally available. Existing water rights must not be adversely affected by the water management tool(s) being considered to solve a problem.
4. Select the option that best meets the following criteria:
  - a. Technical feasibility—Does it solve the problem from a technical perspective?
  - b. Financial feasibility—Do the sponsors have the ability to obtain financing and repay any capital investments as well as the associated operation, maintenance, and rehabilitation expenses?

- c. Economic feasibility—Do the direct and indirect benefits, both quantifiable and nonquantifiable, exceed the direct and indirect costs, both quantifiable and nonquantifiable?
- d. Political feasibility—Is it supported by water users, including municipal, agricultural, recreational, industrial, commercial and other affected water users?
- e. Legal feasibility—Can all applicable federal, state, local, and other legal requirements be satisfied?
- f. Environmental feasibility—Does it protect and seek to enhance social, cultural, and ecological values?

Through this problem-solving process, a water storage project could emerge as the best solution to a particular water resource problem. Where that happens, this plan section is designed to facilitate the development of the needed facilities.

This section of the state water plan is divided into three subsections. The first subsection describes how the state should set priorities among water storage projects, allocate state funds among those projects, and ensure that action is taken to complete water storage projects. The second subsection focuses on the financing of water storage projects, while the third subsection addresses the regulatory aspect of developing and rehabilitating water storage projects.

# SUBSECTION 1: WATER STORAGE POLICY

## BACKGROUND

State water storage policy is to some extent already defined by Montana law. Section 85-1-101(2), MCA declares that *"the public policy of the state is to promote the conservation, development, and beneficial use of the state's water resources to secure maximum economic and social prosperity for its citizens."* Section 85-1-101(4), MCA goes on to say that *"the development and utilization of water resources and efficient, economic distribution thereof are vital to the people in order to protect existing uses and to assure adequate future supplies for domestic, industrial, agricultural, and other beneficial uses."* Finally, Section 85-1-101(6), MCA notes that *"the public interest requires the construction, operation, and maintenance of a system of works for the conservation, development, storage, distribution, and utilization of water, which construction, operation, and maintenance is a single object and is in all respects for the welfare and benefit of the people of the state."*

Although these declarations of policy illustrate the importance of water development and storage to the state of Montana, they do not provide much guidance for selecting which water storage projects to pursue in light of limited state resources. Nor do they ensure that specific actions will be taken by state government to develop priority water storage projects, especially in light of other water management activities.

## POLICY STATEMENT

Water storage (including the construction of new projects and the rehabilitation and expansion of existing projects) shall be considered equally with all other practical options in any search for solutions to water resource problems. When the water storage option is determined to be the water management tool that best solves the problem and promotes and enhances the general welfare of the people of Montana, then it should be actively pursued. The pursuit of water storage projects requires a strong and focused commitment by the state. Given the limited resources of the state, priorities must be established among water storage projects in order for the state to be able to make a commitment to the most important water storage projects.

## ISSUES, OPTIONS, AND RECOMMENDATIONS

### Issue 1 — Prioritizing New Projects

When new water storage projects are selected as the best way to resolve a particular water resource problem, the state faces the question of which projects to focus its limited resources upon. The following options present possible criteria for resolving that question. These criteria are not in any order of priority, recognizing that some may be more important than others on a site-specific basis.

#### Options

1. Solve the most severe problems.
2. Provide multiple uses and benefits.
3. Provide for public uses.
4. Show strong evidence of broad citizen support.
5. Have the ability to obtain non-state sources of funding.
6. Protect and seek to enhance social, ecological, cultural, and aesthetic values.
7. Improve local and state economic development.
8. Help resolve Indian and federal reserved water rights.
9. Support water conservation activities.
10. Promote the use of water reserved under Montana law.

#### Recommendation

The priority of new water storage projects should be established according to which projects best satisfy options 1 through 10, realizing that some of the criteria may not apply in some cases.

### Issue 2 — Prioritizing Rehabilitation Projects

Several existing water storage projects in Montana are seriously in need of rehabilitation. The rehabilitation of existing projects may also help solve a variety of other water management problems, because projects may be expanded

and improved during rehabilitation efforts. However, it may be difficult to rehabilitate all existing dams due to the cost of such activities.

The estimated cost for rehabilitating several existing water storage facilities in Montana ranges from under \$200,000 to over \$5 million per site. Rehabilitating the Tongue River Dam alone will cost between \$25 million to over \$125 million, depending on the amount of risk to life and property the state and its citizens are willing to assume. The total cost for rehabilitating approximately 35 state-owned high-hazard dams, including the Tongue River Dam, is expected to exceed \$200 million.

In light of the need to rehabilitate existing water storage projects, and the cost of such efforts, the state needs to decide which facilities should be rehabilitated first. One factor affecting the effort to prioritize such projects is the Montana Dam Safety Act. This act defines a "high-hazard" dam as any dam or reservoir that, if it fails, would likely cause a loss of life. The classification of a dam as high-hazard, however, does not determine nor imply whether the dam is structurally safe. Thus, the safety of a particular dam, in addition to its classification as high hazard, must be considered in any scheme to prioritize the rehabilitation of existing water storage projects.

#### Options

1. **Identify the high-hazard projects most needing repair based on the criteria listed under The Role of Storage in Water Management, those listed in Issue 1, and the following criteria:**
  - a. **Protect public safety**
  - b. **Impacts of not repairing project**
2. **Breach high-hazard dams that cannot be repaired with a positive benefit-to cost ratio.**
3. **Rehabilitate all unsafe high-hazard dams by the year 2000.**

#### Recommendation

Option 1. The priority of rehabilitation projects should be established according to which projects best satisfy the criteria outlined in Option 1, realizing that some of the criteria may not apply in some cases.

### Issue 3 — Allocating State Funds

As mentioned above, water storage projects must compete with other water management activities in terms of state and federal assistance. In addition, water storage

projects must compete among each other for limited state and federal financial and technical resources. Although the state has a limited ability to determine how federal resources are allocated, it can set priorities for allocating state funds. The question is, given the amount of state funding available for water storage projects, how should these funds be allocated? A related question, how to increase the amount of state funding available for water storage projects, is addressed in the next subsection on financing water storage projects.

#### Options

1. **Allocate the state funds available for water storage solely to rehabilitate existing water storage projects, particularly unsafe, high-hazard facilities.**
2. **Allocate the state funds available for water storage solely to plan and construct new water storage facilities.**
3. **Allocate a certain percentage of the state funds available for water storage for onstream, offstream, and nonstructural types of storage.**
4. **Allocate the state funds available for water storage based on the following order of preference:**
  - a. **Resolve threats to life and property posed by high-hazard facilities that are in an unsafe condition.**
  - b. **Improve and/or expand existing water storage facilities.**
  - c. **Plan and/or construct new water storage facilities, including onstream, offstream, and nonstructural.**

#### Recommendation

Option 4. This approach recognizes the importance of rehabilitating unsafe, high-hazard dams, but also allows for other water storage activities.

## PLAN IMPLEMENTATION

### Legislative Action

The legislature needs to enact legislation that explains the role of storage in water management, including the generic problem-solving process outlined above. The legislature also needs to enact legislation outlining the criteria for prioritizing new storage projects and rehabilitation projects. The legislation should specify that the Governor's Office, in cooperation with the legislature,

will have final authority for prioritizing all water storage projects.

The legislature also needs to enact legislation specifying that state funds available for water storage should be allocated according to the preferences described above.

### Administrative Action

The Department of Natural Resources and Conservation needs to prepare a progress report on water storage activities and submit it to each general session of the legislature. The report should include, at a minimum: (1) the list of

water storage project priorities as determined by the governor and the legislature; (2) an implementation strategy for each priority project that identifies the resources, government actions, and political support needed to accomplish the project; and (3) the status of the priority projects.

### Financial Requirements and Funding Strategies

The implementation of this subsection does not require any additional funding beyond that needed for the water storage projects themselves.

## Plan Implementation Summary

<u>Activity</u>	<u>Responsibility</u>	<u>Deadline</u>
<b>General</b>		
Enact legislation that explains (1) the role of water storage in water management; and (2) the generic water resources problem-solving process	Legislature	April, 1991
Develop a report on water storage activities each biennium	DNRC	Ongoing
<b>Issue 1 - Prioritizing New Projects</b>		
Enact legislation outlining the criteria for prioritizing new water storage projects	Legislature	April, 1991
Prioritize new storage projects	Governor and legislature	Ongoing
<b>Issue 2 - Prioritizing Rehabilitation Projects</b>		
Enact legislation outlining the criteria for prioritizing the rehabilitation of existing water storage projects	Legislature	April, 1991
Prioritize rehabilitation projects	Governor and legislature	Ongoing
<b>Issue 3 - Allocating State Funds</b>		
Enact legislation outlining the preferences for allocating state funds for water storage projects	Legislature	April, 1991

## SUBSECTION 2: WATER STORAGE FINANCING

### BACKGROUND

The cost of constructing, operating, maintaining, and rehabilitating water storage facilities varies tremendously depending on their size, location, and site-specific geological and hydrological conditions. In light of this variation, the next several paragraphs illustrate the range of costs, in 1988 dollars, for developing, maintaining, and rehabilitating water storage projects (see Table 1).

The construction costs of existing water storage projects in Montana (excluding small stockwater and fish ponds) ranges from approximately \$50,000 (for Sturgis Dam) to \$258 million (for Yellowtail Dam). The construction costs of the majority of existing water storage facilities falls in the range of approximately \$1 million to \$4.5 million. The cost per acre-foot (based on total storage capacity) ranges from about \$45 (at Canyon Ferry) to \$2,400 (at Pike Creek Dam).

The annual cost for operating and maintaining existing water storage facilities ranges from about one-half to one and one-half percent of the total cost of construction on an annual basis. Rehabilitating and replacing water storage facilities are also expensive. The estimated cost for rehabilitating existing water storage facilities in Montana was outlined in Subsection 1, Issue 2. While historically there have been inadequate funds available for operating and maintaining some water storage facilities, funds are generally unavailable to rehabilitate and replace nearly all water storage facilities.

Finally, the estimated cost of constructing reasonably large new water storage facilities in Montana ranges from nearly \$10 million for the Johnson Creek site (with a firm annual yield of 5,000 acre-feet) to over \$215 million for the Sunday Creek site (with a firm annual yield of 215,600 acre-feet). The annual cost per acre-foot of yield (based on firm annual yield) ranges from \$38 at the Reichle Dam site (with a firm annual yield of 140,000 acre-feet) to \$378 at the Buffalo Creek site (with a firm annual yield of 27,480 acre-feet).

The estimated cost of constructing several much smaller new water storage facilities (ranging in size from approximately 5,000 acre-feet to 25,000 acre-feet) falls in a range of \$1 to \$10 million. The annual cost per acre-foot for these smaller facilities falls into a range of \$100 to \$1,000, with most of them being around \$500. The annual cost per acre-foot for a few water storage facilities, however, has been estimated at less than \$100.

Historically, federal and state governments helped initiate the development of water storage facilities by providing the necessary up-front funds for project planning and construction. Beneficiaries of the completed water storage projects then repaid, in the form of user fees, some or all of the costs attributable to such benefits (i.e., agriculture has generally repaid 10 to 100 percent on specific projects, while hydropower has generally paid 100 percent). Although many water storage projects provide fish, wildlife, recreation, and other environmental benefits, as well as flood control and navigation benefits, these direct benefi-

Table 1. Costs of Water Storage Projects

<i>Existing Projects</i>				
<u>Construction</u>	<u>Cost/Acre-foot (total storage capacity)</u>	<u>Operation &amp; Maintenance</u>	<u>Rehabilitation</u>	<u>Rehabilitation of 35 State-owned Projects*</u>
\$50,000 to \$258 million	\$45 to \$2,400	one-half of 1% of construction	\$200,000 to \$125 million	\$200 million

\* This total includes \$125 million for one project, the Tongue River Dam.

<i>New Projects</i>			
<u>Construction of Large Projects</u>	<u>Cost/Acre-foot of Large Projects (firm annual yield)</u>	<u>Construction of Smaller Projects</u>	<u>Cost/Acre-foot of Smaller Projects (firm annual yield)</u>
\$10 to \$215 million	\$38 to \$378	\$1 to \$10 million	\$100 to \$1,000

ciaries have had to pay little of the cost of these benefits (c.g., existing recreational user fees generally do not help pay for the costs of water storage facilities). Rather, these benefits have been paid for largely by the general taxpayer.

Although the federal government's interest in financing water storage projects has recently waned, there are still several funding and technical assistance programs administered by federal agencies such as the Soil Conservation Service's watershed management program and the Bureau of Reclamation's technical assistance program. In addition, the state of Montana administers several programs for funding water management activities, including water storage projects.

## POLICY STATEMENT

Financing water storage is an important aspect of water development in Montana. The State of Montana should focus resources on understanding, coordinating, and improving funding programs for water storage development, operation, maintenance, and rehabilitation. Although specific financing packages must be developed on a site-specific basis, all beneficiaries should be considered for a responsible role in repaying the cost of water storage projects. The financial costs of operating and maintaining water storage facilities should be assured prior to construction, and the costs of rehabilitation and replacement should also be considered.

## ISSUES, OPTIONS, AND RECOMMENDATIONS

### Issue 1 - Information, Education, and Assistance

Although there are a variety of federal, state, local, private, and other sources of funding for water storage projects, it is currently very difficult to find one person or organization that understands all of the programs. As a result, potential project sponsors are unaware of and do not understand the conditions under which financing is available in the various programs.

#### Options

1. Document existing programs. Creating and updating a directory may facilitate the financing of water storage projects.

2. Provide public information and education on the availability of programs for financing new and existing water storage projects, in addition to the costs and benefits of water storage projects. This campaign would specify what funds are available and under what conditions.
3. Create a committee of diverse interests to facilitate efforts to finance water storage projects. This committee could serve as a clearinghouse for (1) providing public information and education, (2) developing financial packages for funding water storage projects, and (3) coordinating permitting and regulatory issues related to water storage development. This committee might be coordinated and staffed by the Department of Natural Resources and Conservation (DNRC), the Montana Water Resources Association, the Environmental Quality Council, the Water Resources Research Center, or some other organization.
4. Designate a person (in the Department of Natural Resources and Conservation, the Montana Water Resources Association, the Environmental Quality Council, or the Water Resources Research Center) as a "water storage development coordinator" to facilitate efforts to develop water storage projects. This person would serve in the same capacity as the committee described above.

#### Recommendation

Options 1 and 4. These options are likely to have the greatest impact on financing water storage projects.

### Issue 2 - State Water Resource Funding Programs

The Department of Natural Resources and Conservation administers several grant and loan programs for a variety of water management activities, including water storage. One is the Water Development Program (WDP). According to Montana law, "*the water development program is the key implementation portion of the state water plan and shall be administered to accomplish the objectives of the plan*" (Section 85-1-602, MCA). It goes on to say that "*The storage of water for existing and future beneficial uses shall be given the highest priority [for funding] unless a water development project or activity designed to accomplish another objective is demonstrated to be more beneficial to a greater number of people*" (Section 85-1-602, MCA).



A second program is the Renewable Resource Development (RRD) Program. This program provides grants for the development of all types of renewable resources, including water. A third program is the Reclamation and Development Grant (RDG) Program. This program is designed to fund projects that mitigate the impacts of mining or meet other "crucial state needs." It is conceivable that water storage could be considered part of a reclamation program under the "crucial state need" category, but most water storage projects probably fit better under the Water Development Program or the Renewable Resource Development Program. The principle source of funding for each of these programs are taxes on the extraction of non-renewable resources.

The majority of funds potentially available under these funding programs are not allocated to water storage projects for two primary reasons. First, the Montana Legislature has diverted a significant amount of the funds originally intended for these programs to other, ongoing state programs, primarily the administration of state agencies (see Table 2). Since 1984, over \$41 million dollars was deposited in the accounts created for the WDP and RRD programs. However, only about \$19 million was allocated as grants. The trend has been that more and more of the funds deposited in the accounts are being used for other programs, and, consequently, less are available for water projects.

Second, there has been a lack of applications for water storage projects, and, consequently, available funds are allocated to other types of water projects (see Table 3). Of

**Table 2. Allocation of Funds Authorized for the WDP, RRD, and RDG Programs**

	<u>FYs 1984-91</u>	<u>FYs 1990/91</u>
Authorized	\$41 million	\$15.7 million
Allocated as Grants	\$19 million	\$4.6 million
Used to Fund State Agencies	\$22 million	\$8 million
Used to Fund Water Storage*	\$405,000	\$93,000

\* These amounts are included in funds allocated as grants

the slightly more than \$19 million that has actually been available for grants, a total of only about \$400,000 has been used to fund water storage projects. Since the inception of the programs in 1984, a total of 32 applications have been received for loans and grants to fund water storage projects. Twenty-nine of these applications have been completely funded. Under the Water Development Program, six water storage projects have been granted about \$350,000. By contrast, 70 other projects, including municipal and rural water and sewer systems, streambank stabilization, and groundwater studies, have received about \$4 million.

**Table 3. Allocation of Grants and Loans from 1984 to 1991**

	<u>Water Storage Projects</u>	<u>Other Projects</u>	<u>Total</u>
Water Development Grant Program	\$350,000 (6 projects)	\$4 million (77 projects)	\$4.4 million (83 projects)
Renewable Resource Development Grant Program	\$55,000 (2 projects)	\$3.7 million (62 projects)	\$3.8 million (64 projects)
Water Development Public Loan Program	\$312,000 (3 projects)	\$22 million (46 projects)	\$22.3 million (49 projects)
Water Development Private Loan Program	\$175,000 (1 project)	\$4.1 million (69 projects)	\$4.3 million (70 projects)
Reclamation and Development Grant Program	0	\$10.8 million	\$10.8 million
<b>Total</b>	<b>\$892,000</b>	<b>\$44.6 million</b>	<b>\$45.6 million</b>

Under the Renewable Resource Development Program, 49 projects have been funded at a total cost of over \$1 million. At the same time, only two water storage projects have been funded under this program at a total cost of about \$55,000.

Under the Water Development Public Loan Program (which is financed by the sale of bonds backed by the coal severance trust fund), three water storage projects have been funded at a total cost of about \$312,000. By contrast, 46 other projects have been funded under this program at a total of over \$22 million.

Under the Water Development Private Loan Program (which is financed in part by RRD funds and the sale of general obligation bonds), 70 loans have been approved for a total of \$4.3 million, including one irrigation storage project at a cost of about \$175,000. Approximately \$5.5 million is available each biennium under the Reclamation and Development Grants Program, but to date no water storage projects have been funded.

The issue on financing in the previous section of this plan focused on how to allocate the funds available for water storage. The purpose of this issue is to explore opportunities for increasing the available amount of such funds.

### Options

1. Continue public information and education on the availability of funds under these programs.
2. Encourage potential project sponsors to apply for funds.
3. Support legislative and administrative enforcement of the statutory priority for water storage projects under the Water Development Program.
4. Create a new special revenue account (the "Water Storage Special Revenue Account") to be used exclusively for funding water storage projects as identified and prioritized in Subsection 1, Issue 3, Option 4. The new account would receive 25 percent of each of the Water Development Special Revenue Account and the Renewable Resource Development Account. The funds in the Water Storage Special Revenue Account would be expended as authorized under current water development accounts, including grants, loans, and to underwrite bonds.
5. If the funds deposited in the new "Water Storage Special Revenue Account" are not used during a given biennium, the funds should be allocated to other state programs.

6. If the funds deposited in the new "Water Storage Special Revenue Account" are not used during a given biennium, the funds should accumulate rather than be transferred to other programs.
7. Seek authorization for allocating a higher percentage of existing non-renewable resource funds (e.g., coal severance tax revenues) to the development of Montana's renewable resources, particularly water.
8. Encourage state government to take a more active role in initiating water storage projects.
9. Authorize the use of 25 percent of the funds over and above the statutory minimum balance of \$100 million on the Resource Indemnity Trust (RIT) Fund for water storage projects.
10. Delete the \$100,000 cap on Water Development Program Grants for water storage projects, as currently outlined in DNRC administrative policy.

### Recommendation

Options 4, 6, 7, and 9. These options are likely to have the greatest impact on financing water storage projects.

### Issue 3 - Cost-sharing and Coordination

When federal funds for water storage development are available, state and local entities are usually required to provide matching funds. However, it is often very difficult for state and local entities to come up with their appropriate share of funds. In view of this situation, the options outlined below are designed to (1) improve the ability to satisfy the cost-sharing requirements; (2) generate funds for operating, maintaining, rehabilitating, and replacing existing storage facilities; and (3) generate funds for constructing projects without federal financial aid.

### Options

1. Pursue water storage projects only if they have local and state support and a realistic ability to comply with federal cost-sharing requirements.
2. Creatively utilize all available state, local, and private sources of funding to satisfy federal cost-sharing requirements.
3. Encourage Resource Conservation and Development areas (RC&Ds) to develop funding packages and create broad-based coalitions to support water storage development.

4. Make use of existing authorities associated with public entities such as conservancy districts, irrigation districts, and water and sewer districts to tax and collect fees for purposes of funding water storage projects. If existing public authorities are not adequate for the proposed purposes, make the appropriate modification.
5. Establish, on a site-specific basis, special improvement districts, rural improvement districts, conservancy districts, multi-conservation district special project areas, or some combination thereof to help raise funds for water storage projects.
6. Identify potential sources of private sector funding and integrate these on a site-specific basis. These sources might include contributions from various water user groups, such as irrigators, industries, recreationists, conservation and preservation groups, and others.
7. Increase state taxes and designate the additional funds to water storage development.
8. Encourage the state or a coalition of private investors to purchase federally owned water storage projects and operate them to generate funds for operation, maintenance, and new storage projects.

#### Recommendation

Options 3, 4, and 6. These options are likely to have the greatest impact on financing water storage projects.

#### Issue 4 - Payment by Beneficiaries

If water storage projects are to be developed or rehabilitated in the future, a diversity of funding sources will be needed. In addition to using federal, state, and private funds, another possibility is to encourage or require all beneficiaries to play a responsible role in financing the projects. The funds generated from this approach could be used to help finance a portion of water storage projects, including planning, construction, operation, maintenance, rehabilitation, and replacement.

The funds raised under any one of the following options would not generally be relied on to repay the entire cost of a project.

#### Options

1. Continue having irrigation, hydropower, municipal, and industrial beneficiaries repay some of the project costs through user fees, and allow the sponsor together with the funding source to make site-specific recommendations on whether those fees will adequately cover the costs of the benefits.
2. Conduct a study on the feasibility of having recreational beneficiaries repay a portion of the project costs associated with recreational opportunities. Among the options that might be assessed are:
  - a. A fee, on a site-specific basis, to individuals who take advantage of the recreational benefits associated with water storage projects funded with public resources. Like an entrance fee to a state or national park, the fee would be assessed each time a person participates in some recreational activity related to the water storage project. An annual user's pass would also be available for each site. The funds generated from the fee would be designated for water storage development that includes recreational or fish and wildlife benefits.
  - b. A "water development" stamp. This stamp would be required of anyone purchasing a fishing, duck hunting, boat, or other water-related license. The funds generated from this stamp would be designated for water storage development that includes recreational or fish and wildlife benefits. Such funds would have to be controlled in a manner consistent with state-federal requirements outlined in Section 87-1-701-714, MCA.
  - c. An increase in the Motorboat Fuels Tax to be used for water storage development that includes recreational or fish and wildlife benefits.
  - d. A generic "land and water conservation" license for anyone using public lands or water. At least some of the money generated from these licenses would be designated for water storage development that includes recreational, fish and wildlife, and/or environmental benefits. Such funds would have to be controlled in a manner consistent with state-federal requirements outlined in Section 87-1-701-714, MCA.
  - e. The Department of Fish, Wildlife and Parks providing appropriate funds on an individual project basis through agency funding mechanisms.

3. Continue to use tax revenues to provide a portion of fish, wildlife, recreational, and other environmental benefits associated with water storage projects.
4. Continue to use tax revenues to provide flood control and navigation benefits associated with water storage projects.
5. Continue to use tax revenues to provide a portion of the irrigation, municipal, industrial, and hydropower benefits associated with water storage projects.
6. Charge individuals and groups that benefit from the flood control and navigation benefits of a new water storage project. Create one of the several resource districts possible under Montana law to collect fees and/or require beneficiaries to pay taxes.
7. Require downstream states to financially compensate Montana for the impacts of upstream reservoirs that largely benefit downstream users.

**Recommendations**

Options 1, 2, 3, 5, and 6. These options are likely to have the greatest impact on financing water storage projects.

**Issue 5 - Economic Value of Alternative Uses**

The appropriate role of each beneficiary in financing water storage projects might be based on the economic value of the benefits received and the ability of the beneficiary to pay. The problem is that, while it is relatively easy to determine the economic value of hydropower, municipal, and agricultural uses of water, it is much more difficult to estimate the economic value of secondary benefits (e.g., local and state economic development) and other direct benefits (e.g., recreation; fish and wildlife protection; wetlands and riparian habitat preservation; augmentation of flows for water quality, instream flow protection, groundwater recharge, and late season irrigation; and downstream navigation).

**Options**

1. Conduct research designed to identify all the potential benefits associated with water storage projects, estimate the economic value of all these benefits on a per acre-foot basis, assess the validity of methods used to estimate such values, and generate data that

can be meaningfully compared (e.g., estimate all the values in terms of acre-feet).

2. Conduct research designed to estimate the value of secondary economic benefits related to water storage development, such as rural and local economic development.

**Recommendation**

No recommendation. While this is an important issue, it is not a high priority. It could be integrated into the study outlined in Issue 4, Option 2.

**PLAN IMPLEMENTATION**

**Legislative Action**

The legislature needs to authorize one new staff position for a "water storage development coordinator" in the Department of Natural Resources and Conservation.

The legislature needs to create a "Water Storage Special Revenue Account" and amend Section 85-1-601 et seq., MCA to allocate 25 percent of the Water Development Special Revenue Account to the new account. Section 90-2-101 et seq., MCA, which deals with the Renewable Resource Development Account, needs to be similarly amended. The legislation should specify that the funds in this account will be used exclusively for water storage projects. In addition, the legislation should specify that, if these dedicated funds are not used during a given biennium, they should accumulate rather than being used to support other programs.

The legislature needs to reallocate more non-renewable resource funds (e.g., coal severance tax revenues) to the development of renewable natural resources, particularly water. The legislature also needs to adopt a provision in Section 85-1-604 and Section 15-38-202, MCA to authorize the use of 25 percent of the funds over and above the statutory minimum balance of \$100 million on the revenue from the Resource Indemnity Trust for water storage projects.

**Administrative Action**

The Department of Natural Resources and Conservation needs to hire (or, in the event that the legislature does not authorize a new position, the DNRC would need to reallocate an existing position for) a water storage development

coordinator to document existing federal, state, local, private, and other sources of funding for water storage projects; facilitate efforts to develop water storage projects; identify potential sources of funding in the private sector and include these in funding packages for specific projects; help develop a biennial report on water storage activities, as outlined in Subsection 1; and perform other duties as assigned.

The Department of Fish, Wildlife and Parks, in cooperation with the Department of Natural Resources and Conservation, needs to study the feasibility for having recreational beneficiaries repay some of the project costs associated with recreational benefits.

Resource Conservation and Development Areas and existing districts need to develop funding packages and

support water storage development. They also need to develop mechanisms to charge flood control and navigation beneficiaries.

Water storage development sponsors should continue to use tax revenues for a portion of irrigation, hydropower, municipal, industrial, fish, wildlife, recreational, and other environmental benefits related to water storage projects.

## Financial Requirements and Funding Strategies

Sufficient funds will need to be authorized both legislatively and administratively to hire a water storage development coordinator and for the coordinator to carry out his or her responsibilities. Adequate funds will need to be authorized to conduct a study on the feasibility of recreational user fees.

### Plan Implementation Summary

<u>Activity</u>	<u>Responsibility</u>	<u>Deadline</u>
<b>Issue 1 - Information and Education</b>		
Hire a water storage development coordinator	Legislature and DNRC	June, 1991
Document programs	Water storage development coordinator	January, 1992
<b>Issue 2 - Water Development Programs</b>		
Create a water storage special revenue account	Legislature	April, 1991
Reallocate more non-renewable resource funds to renewable resource development	Legislature	April, 1991
Authorize RIT funds for water storage	Legislature	April, 1991
<b>Issue 3 - Cost-sharing and Coordination</b>		
Develop funding packages and coalitions	RC&Ds and existing districts	Ongoing
Integrate private sources of funding	Water storage development coordinator	Ongoing
Study and make use of existing authorities to tax and collect fees for water storage projects	Water storage development coordinator	Ongoing
<b>Issue 4 - Payment by Beneficiaries</b>		
Assess the appropriateness of fees paid by irrigation, hydropower, municipal, and industrial beneficiaries	Water storage development coordinator	Ongoing
Conduct a study	DFWP and DNRC	June, 1992
Charge flood control and navigation beneficiaries	RC&Ds and Water Storage Districts	Ongoing
Use general tax revenues for a portion of irrigation, hydropower, municipal, and industrial, fish, wildlife, recreational, and other environmental benefits	Water storage development sponsors	Ongoing

# SUBSECTION 3: WATER STORAGE REGULATIONS

## BACKGROUND

The planning, construction, operation, maintenance, and rehabilitation of water storage facilities in Montana is regulated by a multitude of federal, state, and local laws and administrative rules as well as international, interstate, and tribal treaties and compacts. In those laws, rules, and agreements, various requirements are designed to protect public interests in water appropriation and use, health and safety, environmental conservation, and cultural site preservation.

Examples of regulations that protect the interests of Montana's citizens include the Montana Water Use Act, which provides for the granting of water rights for a wide diversity of beneficial water uses including water stored for irrigation, hydropower, and recreation. Other laws regulate water storage by requiring minimum streamflows to maintain water quality and by governing construction of storage facilities to protect public health and safety. Examples include the Federal Safe Drinking Water Act, the Federal Power Act, the Montana Dam Safety Act, and local flood plain ordinances. Laws such as the Federal Endangered Species Act, Wild and Scenic Rivers Act, and National Historic Preservation Act guard environmental and cultural values by prohibiting storage or requiring mitigation where storage may impact natural resources, important wildlife species, or historical sites.

The state also has obligations under international, interstate, and tribal treaties and compacts that may limit the availability of water for storage. For example, the 1909 Boundary Waters Treaty between the United States and Canada provides for the division of flows in the Milk and St. Mary rivers. The Yellowstone Compact is an interstate agreement allocating basin water between Montana, Wyoming, and North Dakota. Indian tribes have rights to use water under state and federal laws.

The laws, regulations, and agreements applicable to water storage are summarized in the water storage regulations background document which is available from the DNRC upon request. A preliminary review indicated that some requirements may unduly hinder water storage development in Montana. The identified issues are addressed in this water plan section.

## POLICY STATEMENT

Water storage is one of several tools available for managing Montana's water resources. A substantial number of laws and regulations affect water storage activities

and are necessary to protect vital public interests and environmental values. The state of Montana should act to ensure that laws and regulations are reasonable and properly administered to allow for the use of storage as a viable water management tool.

## ISSUES, OPTIONS, AND RECOMMENDATIONS

### Issue 1 - Duplicative Laws and Regulations

Some laws and regulations contain duplicative requirements, result in overlapping administrative authorities, and set forth conflicting definitions. For example, high-hazard dams in Montana located on certain national forest land are governed by similar requirements under the Montana Dam Safety Act, Federal Land Policy and Management Act, and federal Wilderness Act. In addition, definitions of such terms as "navigable" and "stream bed" differ between laws and may be inconsistent. As a result, water storage development and operation may be unnecessarily cumbersome and confusing.

#### Options

1. **Identify unnecessary duplications and inconsistencies and recommend corrective measures. This evaluation could address one or more of the following issues.**
  - a. **Identify duplicative requirements, overlapping administrative jurisdictions, and inconsistent definitions of common terms.**
  - b. **Identify federal laws whose administration could be assumed by the state to improve efficiency and enhance sensitivity to local problems and concerns.**
  - c. **Identify overlapping state regulatory authority.**
2. **Designate a lead agency to coordinate all water storage permitting.**
3. **Take no action. The existing requirements, authorities, and definitions are appropriate to manage the resource.**

#### Recommendation

**Option 1. The evaluation and corrective measures will streamline regulation of water storage development.**

## Issue 2 - Costs Related to Dam Safety

Structural repairs or construction of existing and proposed high-hazard dams may be prohibitively expensive. One factor affecting costs are dam safety regulations. The Montana Dam Safety Act establishes the degree of risk to life and property that is acceptable with respect to a high-hazard dam, defined as any dam or reservoir that, if it fails, would likely cause a loss of life. Classification as a high-hazard dam does not imply nor determine whether or not the dam is structurally sound. If risks to public safety are increased—for instance, accepting more than one lost life or allowing a lower minimum spillway capacity—the costs of rehabilitating existing dams and building new facilities would decrease. Conversely, increased safety raises costs. In general, the administrative rules implementing the Montana Dam Safety Act require high-hazard dams to satisfy federal standards. However, standards in the Montana Dam Safety Act for designing spillways are less stringent than federal standards.

The administrative rules implementing the Montana Dam Safety Act require that, by July 1, 1995, existing high-hazard dams, as identified by the Corps of Engineers in 1981, must obtain an operating permit from the Department of Natural Resources and Conservation verifying that the dams satisfy safety standards. To date, studies have been completed on only approximately 33 of 85 high-hazard reservoirs to determine the modifications needed to satisfy the standards. Costs of rehabilitating state-owned high-hazard dams is expected to exceed \$200 million. The costs of engineering studies and rehabilitation construction may be prohibitively expensive, thereby causing a delay or an inability to meet dam safety standards.

### Options

1. Revise the Montana Dam Safety Act to increase the acceptable degree of risk to public safety and to reallocate responsibility for that risk between the public, government, and dam owners.
2. Repeal the Montana Dam Safety Act and defer all dam safety activities to the federal government.
3. Evaluate the Montana Dam Safety Act and implementing regulations to:
  - a. Determine the acceptable degree of risk to public safety and appropriate allocation of responsibility for that risk between the public, government, and dam owners.
  - b. Determine whether the definition of a high-hazard dam should be modified.

- c. Determine whether the high-hazard classification should be expanded into a risk scale that allows structural design requirements to reflect probable risk to life and property.
  - d. Determine whether the Department of Natural Resources and Conservation should be given greater discretion to substitute alternative means of addressing risks, such as early warning systems, for structural design requirements.
4. Take no action. The current provisions of the Montana Dam Safety Act appropriately address dam safety concerns.

### Recommendation

Option 3. Dam safety is an important public policy issue, and acceptable risks to public safety must be determined. In recommending Option 3, the State Water Plan Advisory Council acknowledges that the DNRC should assess alternative means of addressing risks, such as requiring early warning systems and balancing risks with consequential costs, and initiate rulemaking as appropriate.

## Issue 3 - Inability of Private Entities to Obtain Water Reservations

Under the Montana Water Use Act, only public entities may apply to reserve water for existing and future beneficial uses, including those involving the storage of water. Private entities are prohibited from directly obtaining water reservations. Another way to secure water for future uses is to extend the time limit for developing water rights. Excluding private entities from acquiring water reservations may preclude some private development of water storage having public benefits. In addition, while the Montana Water Use Act allows water reservations for multi-purpose uses, there may be perceptions that water reservations are for single-purpose uses only.

### Options

1. Revise the Montana Water Use Act to allow private entities to obtain water reservations.
2. Revise the Montana Water Use Act to extend the 10-year limit on developing water use permits associated with water storage development.
3. Provide public education to encourage water reservations for multipurpose uses.

4. Designate or create a public body to advance water reservation applications for private entities.
5. Evaluate the Montana Water Use Act and the desirability of:
  - a. Allowing private entities to obtain water reservations.
  - b. Designating or creating a public body to advance water reservation applications for private entities.
6. Take no action. The Montana Water Use Act appropriately guides beneficial water uses.

#### Recommendation

Options 2, 3, and 5. By extending the time limit for developing water rights associated with water storage, private development of storage projects will be facilitated. The policy restricting water reservations to public entities should be re-evaluated to determine whether the public use preference should stand.

#### Issue 4 - Lack of Information about Water Storage Laws

No comprehensive source of information exists on the laws and regulations affecting the development and operation of water storage projects. Consequently, potential project developers may be unaware of the legal requirements that must be met as well as the resources available for assistance. Development of water storage projects may be facilitated by easy access to this information.

#### Options

1. Prepare, distribute, and regularly update (1) a directory of laws and regulations applicable to water storage, and (2) a booklet describing the major requirements and identifying administrative agencies; both suitable for use by laypersons.
2. Develop and administer a targeted program of education to promote awareness of legal requirements and sources of information applicable to the development and operation of water storage projects.
3. Designate a person to serve as an information coordinator for permitting and regulatory issues related to water storage development.

#### Recommendation

All options. These activities would make information accessible and assist in the proper development of water storage facilities.

#### Issue 5 - Repairing Wilderness Area Dams

Rules and regulations pursuant to the Wilderness Act may constrain the maintenance or rehabilitation of dams in wilderness areas. The use of mechanized equipment in designated wilderness areas for maintenance or rehabilitation is prohibited, except where such use was practiced prior to wilderness designation or is authorized by the Chief of the Forest Service under specifically approved guidelines. There are 16 dams in Montana's wilderness areas that potentially threaten public safety, and others may exist in future wilderness designations.

Potential problems related to dams located in wilderness areas include (1) regulations governing wilderness areas may hinder dam maintenance, (2) rule implementation may impede dam maintenance, (3) dam owners may not understand the regulations affecting the use of mechanized equipment to maintain dams, and (4) dam owners, for any number of reasons, may not be willing or able to comply with wilderness area regulations. Any one or combination of these problems has, in some cases, led to dams deteriorating to the point where they may threaten public safety.

#### Options

1. Develop an informational program describing the application procedure for the use of mechanized equipment and other rules applicable to dam repair in wilderness areas.
2. Develop a training program for state and federal administrators to promote better implementation of regulations governing wilderness areas.
3. Develop more detailed guidance in the wilderness regulations promoting public safety through dam maintenance procedures.
4. Develop a public process, which may include the U.S. Forest Service, Bureau of Land Management, Department of Natural Resources and Conservation, dam owners, conservationists, consultant firms, and other interested persons, to identify problems and develop appropriate solutions.

#### Recommendation

Option 4. Since the nature and scope of the problem is unclear, further examination by affected parties is necessary.



## **PLAN IMPLEMENTATION**

### **Legislative Action**

The Water Policy Committee needs to reevaluate the acceptable degree of risk to public safety under the Montana Dam Safety Act. The Water Policy Committee also needs to consider the public policy of extending water reservations to private entities under the Montana Water Use Act.

The legislature needs to revise the Montana Water Use Act to extend the 10-year limit on developing water use permits associated with water storage development.

### **Administrative Action**

The Department of Natural Resources and Conservation needs to evaluate federal, state, and local laws and regulations applicable to water storage to identify duplicative requirements, overlapping administrative authorities, and conflicting definitions and make reports and recommendations to the State Water Plan Advisory Council, Board of Natural Resources and Conservation, Legislative Water Policy Committee, and legislature as appropriate.

The Department of Natural Resources and Conservation needs to draft administrative rule changes to implement decisions of the Legislative Water Policy Committee.

The Department of Natural Resources and Conservation and the Montana Water Resources Center need to

develop and administer a targeted education program to: (1) encourage water reservations for multipurpose uses, and (2) promote awareness of legal requirements and sources of information applicable to the development and operation of water storage projects.

The Department of Natural Resources and Conservation needs to prepare, distribute, and regularly update (1) a listing of laws and regulations applicable to water storage, and (2) a booklet that describes the major requirements and identifies administrative agencies; both suitable for use by laypersons.

The Department of Natural Resources and Conservation needs to designate an individual to serve as an information coordinator for permitting and regulatory issues related to water storage development.

The Department of Natural Resources and Conservation needs to develop, in cooperation with appropriate federal and state agencies, a public process to identify problems associated with the maintenance of dams in wilderness areas and develop appropriate solutions.

### **Financial Requirements and Funding Strategies**

The legislature needs to provide adequate funding for the Water Policy Committee to conduct a water storage regulation study. Approximately \$5,000 is needed during the 1991-92 biennium for the Department of Natural Resources and Conservation to print and distribute the water storage regulation directory and booklet.

## Plan Implementation Summary

<u>Activity</u>	<u>Responsibility</u>	<u>Deadline</u>
<b>Issue 1 - Duplicative Laws and Regulations</b> Water Storage Regulation Study	DNRC	November, 1992
<b>Issue 2 - Costs Related to Dam Safety</b> Water Storage Regulation Study	Legislative Water Policy Committee DNRC	November, 1992
<b>Issue 3 - Inability of Private Entities to Obtain Water Reservations</b> Water Storage Regulation Study Public Education	Legislative Water Policy Committee DNRC and Montana Water Resources Center	November, 1992 January, 1992/ Ongoing
<b>Issue 4 - Lack of Information about Water Storage Laws</b> Designate a water storage coordinator Prepare and distribute water storage regulation directory and booklet Public education	DNRC Water storage coordinator Water storage coordinator	June, 1991 January, 1992 January, 1992/ Ongoing
<b>Issue 5 - Inability to Repair Wilderness Area Dams</b> Sponsor a public forum	Governor's Office DNRC U.S. Forest Service	December, 1990

## BIBLIOGRAPHY

- Callens, Judith. February 1990. "Water Storage Regulations: A Summary." Paper prepared for the Water Storage Regulations Steering Committee, State Water Plan. Helena, MT.
- Ewer, David. November 17, 1989. "Financing Water Storage Projects with Bonds in Montana." Memorandum prepared for the Water Storage Financing Committee, State Water Plan. Helena, MT.
- Frank, Michael D., B. R. Beattie, and C. R. Taylor. December 31, 1985. "Economics of Water-Marketing Options for Montana," in Montana Environmental Quality Council Annual Report, Ninth Edition on Montana's Water. Helena, MT.
- Interstate Conference on Water Policy. January 6, 1987. *Survey of State Funding of Water Resources Development Projects: Fiscal Years 1985-1987*. Washington, D.C.
- McKinney, Matthew J. November 27, 1989. "The Economic Value of Instream Flows." Paper prepared for the Water Storage Financing Committee, State Water Plan. Helena, MT.
- Montana Department of Natural Resources and Conservation. January 1981. *Water Storage in the Big Hole: A Recommendation*. Helena, MT.
- \_\_\_\_\_. January 1989. *Reclamation and Development Grants Program: Project Evaluations and Recommendations for 1990-1991 Biennium and Status Report for Previously Funded Projects*. Helena, MT.
- \_\_\_\_\_. January 1989. *Renewable Resource and Water Development Programs: Project Evaluations and Recommendations for 1990-1991 Biennium and 1988-1989 Biennium Status Report*. Helena, MT.
- \_\_\_\_\_. October 1989. *Water Storage in Montana: A Background Report*. Helena, MT.
- \_\_\_\_\_. October 10, 1989. "Discussion Paper on Financing Water Storage Projects in Montana." Paper prepared for the Water Storage Financing Committee, State Water Plan. Helena, MT.
- Montana Water Resources Board. June 1968. *Summary of Potential Projects in Montana*. (Inventory Series No. 9). Helena, MT.
- U.S. Bureau of Reclamation. 1977. *Report on Potentials of Eastern Montana Basins*. Billings, MT.
- \_\_\_\_\_. February 1984. *Offstream Storage, Yellowstone River, Montana Appraisal Report*. Billings, MT.
- Western States Water Council. May 1984. *State/Federal Financing and Western Water Resource Development*. Salt Lake City, UT.



## APPENDIX 5



STATE OF MONTANA

DEPARTMENT OF FISH, WILDLIFE AND PARKS

1992/93/94 BIENNIAL FINAL RULE - STATE PARK SYSTEM USER FEES

I. LEGAL AUTHORITY FOR RULE

Sections 23-1-105, 23-1-106, and 87-1-303 MCA authorize the collection of fees and charges for the use of state park system units and fishing access sites, and contain rule-making authority for their use, occupancy and protection. Section 23-2-408 MCA authorizes the Fish, Wildlife & Parks Commission to establish recreational and commercial users fees for floating and camping on the Smith River. By virtue of this authority, the department has promulgated the following rule.

II. DEFINITIONS

- A. A "camper unit" is defined as a motorized vehicle, motorhome, camping bus, pull-type camper, tent, or any device designed for sleeping, including a combination of any two that are used by parents and their unmarried children.
- B. Camping Cash Cards are a book of one dollar coupons issued in books of 22. They are used in lieu of cash to pay for camping fees in state parks and fishing access sites.
- C. Day use fees - are fees for gaining access to "designated fee areas" of the state park system, either on an annual passport or single visit fee basis.
- D. Recreation use fees - are fees for the use of specialized sites, facilities, equipment or services furnished at state expense, and are paid in addition to day use fees at park units where day use fees are charged (e.g., camping fees).
- E. Special fee park - is a park normally in an urban setting with heavy usage and increased maintenance and administrative costs.
- F. Special recreation permit fees - are fees for specialized recreation uses such as group activities, recreation events, motorized recreation vehicle activities, and other specialized recreation uses.
- G. Vehicle - means any passenger car, mini van, pick-up truck, camper, or boat where means of access is by water, and does not include commercial vehicles.

### III. DAY USE FEES

A. A "designated fee area" is an area which meets all of the following criteria:

1. The area is a unit of the Montana State Park System administered by the Parks Division of the Department of Fish, Wildlife and Parks.
2. The area is administered primarily for scenic, historic, archaeological, scientific, or recreational purposes.
3. The area has recreation facilities or services provided at state expense.
4. The nature of the area is such that day use fee collection is administratively and economically practical.

B. Types of Day Use Fees

1. State Park Passport - is an annual pass which must be permanently affixed by the holder to the vehicle's interior left front windshield to be valid. It permits entry to all designated fee areas. It can be purchased at selected license agents, department offices, and designated recreation fee areas. It is valid for one license year and admits one vehicle and the occupants.
2. Single Visit Permit - a non transferable use permit. To be valid, the permit must be completed and displayed by the holder according to the instructions. It permits the entry of one vehicle and all its passengers into a park area, or the entry of a single person into a park on foot, by bus, bicycle, or motorcycle. A "single visit" means a more or less continuous stay within a designated area. Payment of a single visit fee shall authorize exits from and re-entries to the area where purchased and all nearby designated areas. The single visit fee permit is valid only for date of issue unless issued in conjunction with an overnight camping fee. If issued with an overnight camping fee, it is valid for a 24-hour period.
3. Non-Fee Permits - may be established by the park manager. These permits can be issued to individuals using the park for non-recreational



purposes. Qualifying individuals include, but are not limited to, concession and park employees.

#### IV. RECREATION USE FEES

A. A recreation use fee shall be charged if at least one of the following criteria is satisfied:

1. A substantial state investment has been made in the facility.
2. The facility requires regular maintenance.
3. The facility or service requires the presence of on-site personnel.
4. The facility is utilized for the personal benefit of the user for a fixed period of time; and

B. All of the following criteria are satisfied.

1. The facility is developed, administered, or provided by the Department of Fish, Wildlife and Parks.
2. The facility is provided at state expense.
3. The nature of the facility is such that fee collection is administratively and economically practical.

C. Types of Recreation Use Fees

1. Overnight Camping Fees - are charged per "camper unit" for a specific campsite or temporary area designated by the regional park manager. Unless posted otherwise, no more than two camper units may occupy one campsite. Each camper unit must pay an overnight camping fee.
2. Other facilities and services which are eligible for recreation use fees include:
  - Guided tours
  - Campfire wood
  - Specialized sites (rifle ranges)
  - Overnight shelters
  - Swimming areas with lifeguards
  - Boat rental
  - Boat mooring & storage facilities
  - Reservation services

- Boat launching facilities & services
- Trailer dump stations
- Electrical hook-ups
- Extra Vehicle
- Vehicle & trailer storage facilities
- Recreational floating
- Showers

V. SPECIAL RECREATION PERMIT FEES

A. Before issuing a special recreation permit, the following conditions must be satisfied:

1. The use complies with pertinent state and federal laws and regulations on public health, safety, air quality, and water quality.
2. The use will not adversely impact archeological, historic, or natural values and is not in conflict with existing classification policy guidelines and specific park management objectives.
3. The necessary clean-up and restoration will be made for any damage to resources or facilities.
4. The use will be restricted, to the extent practical, to an area where minimal impact is imposed on the natural, cultural or recreational resource values.

B. Types of Special Recreation Permit fees

1. Designated Group Use Area Fees - The following rules apply to designated group use areas:
  - a. Day use fees are not included in the group use fees and must be paid in addition to the group use fees.
  - b. Telephone reservations may be made to the appropriate regional headquarters or park office between 8 a.m. and 5 p.m., Monday through Friday. All telephone reservations must be confirmed within 48 hours by the completion and filing of a special recreation permit and the payment of cash or 2 checks (one for use fee; one for cleaning deposit) by a representative of the interested group in the appropriate office.

- c. Department representatives shall have sole authority and discretion to determine if violation of rules and regulations or undue expense in cleanup or maintenance of the area shall be grounds for denying return of the cleaning deposit and/or denying another reservation to any group. The Department may post more specific or rigorous rules for the use of each group use area as group size and/or complexity of use dictates.
  - d. A non-refundable use fee and a refundable cleaning deposit will be assessed for each area for each 24-hour period or fraction thereof.
  - e. In the event a reservation is canceled more than 72 hours before the intended use period, the use fee and cleaning deposit will be refunded. If a reservation is canceled less than 72 hours before the intended use period, only the cleaning deposit will be refunded. If area is unavailable for the intended use (due to unscheduled maintenance, bad weather, etc.), fee and deposit will be refunded.
2. Other uses which may be eligible for special recreation permit fees include:
- group activities
  - boating regattas
  - motorized vehicle activities
  - fireworks displays
  - fishing derbies
  - athletic events

VI. FEE EXEMPTIONS

- A. Recreation fees may be discounted or exempted in the following instances:
  - 1. Park managers may discount or exempt recreation fees for organized tours or outings conducted for educational or scientific purposes and for those actively engaged in medical treatment or therapy in the area visited.
  - 2. In addition, a park manager may, when in the public interest, prescribe certain hours or days during which the collection of recreation fees should be discounted or exempted for specific events, or when services are reduced.

3. In both instances, a cleaning deposit may be required.
- B. In addition to the above, no day use shall be charged in the following instances:
1. Educational Groups - Organized tours or outings conducted for educational or scientific purposes qualify for an exemption of day use fees if:
    - a. The educational or scientific purpose is related to the resources of the area being visited.
    - b. The group is from a bona fide institution established for these purposes.
    - c. The group applies for and receives an exemption of fees by submitting documentation of their official recognition as an educational or scientific institution and a statement as to the purpose of their proposed visit.
    - d. The use for which the exemption is proposed is not primarily for recreational purposes.
  2. Park Thoroughfares - No day use fee shall be charged for travel over any road or highway established as part of the National Federal-Aid System, which is commonly used by the public as a means of travel between two places, either or both of which are outside the designated day use fee area.
  3. In-Holding Access - No day use fee shall be charged for travel by private non-commercial vehicle over any road or highway to any land within any designated day use fee area in which such person has a property right.
  4. Official Government Business - No day use fee shall be charged any person conducting state, local, or federal government business.
  5. Under Twelve - No day use fees shall be charged for persons who have not reached their twelfth birthday except in Special Fee Parks.
  6. Treaty Rights - No day use fees shall be charged persons having right of access to lands or waters within a designated day use fee area for hunting or

fishing privileges under a specific provision of law or treaty.

C. State law (Section 23-1-105(2), M.C.A.) provides that overnight camping fees must be discounted 50% for a campsite rented by a Montana resident who is a:

1. Senior citizen 62 years of age or older. Photo identification (e.g. Montana Driver's License) or a birth certificate must be displayed as proof of age.
2. Disabled Person - who has been medically determined to be blind or permanently disabled and is eligible to receive benefits under federal law. A blue disability card issued by the Department of Fish, Wildlife and Parks or a valid Disabled Resident Conservation License must be displayed as proof of disability.

D. In addition to the above, recreation use fees shall not be charged for the following:

1. Free Facilities - In no event shall any of the following, whether used singularly or in any combination, be designated as facilities for which recreation use fees shall be charged:

- |                    |                     |
|--------------------|---------------------|
| - Drinking water   | - Toilet facilities |
| - Wayside exhibits | - Picnic tables     |
| - Roads            | - Visitor centers   |
| - Overlook sites   |                     |

2. Campgrounds - In no event shall there be a charge for the use of any campsite and adjacent related facilities unless the campground in which the site is located has all of the following:

- Tent or trailer spaces or areas
- Access road
- Refuse containers
- Toilet facilities
- Collection of the fee by an employee or agent of the department either personally or from "iron ranger" lock boxes.
- Reasonable visitor protection, and simple devices for containing a campfire (where campfires are permitted).

VII. PENALTY

No person shall enter or use park areas, campgrounds, or other facilities, or otherwise participate in programs or activities for which fees have been established without first paying the required fees. Any violation of this provision is punishable by a fine not to exceed \$500 (Section 23-1-106, M.C.A.). Also refer to 12.8.213(1) ARM.

VIII. POSTING OF DESIGNATED AREAS

Fee requirements shall be prominently signed and posted where recreation fees are being charged for day use fee areas or at appropriate locations with designated recreation use facilities. Areas charging for special recreation permits shall post fee information at the area headquarters having administrative jurisdiction over the area in which the use authorized by the permit is to occur. Whenever feasible, fee signs shall be posted at the use site at the time of use.

IX. FEE LIST

DAY USE FEES

State Park Passport: Valid for one license year (March 1st to February 28th); \$15 per vehicle (\$7.50 for second vehicle, if both passports are purchased at the same time). If purchased from November 30th through February 14th, price is \$12 (\$6 for second vehicle, if both passports are purchased at the same time). The third vehicle, and any additional vehicles are full price. Passports purchased during the November 30 - February 14th period are valid immediately upon purchase if affixed to interior lower left windshield.

When purchasing half price second passport, both vehicle registrations must be presented to the license agent, and both vehicles must be in the same name or registered at the same address.

\$ .50/person charge applies to walk-ins (normally urban parks), commercial bus passengers, and to each rider on a bicycle or motorcycle. Once paid, single visit rates allow entry into all nearby state parks for the day paid only.

<u>PARK</u>	<u>VEHICLE</u>	<u>PERSON</u>
Parks open year round - single visit rates:		
Ackley Lake.....	\$3.....	\$ .50
Bannack.....	\$3.....	\$ .50
Canyon Ferry.....	\$3.....	\$ .50

Cooney.....	\$3.....	\$ .50
Flathead Lake: Elmo, Wayfarers, West Shore, Yellow Bay.....	\$3.....	\$ .50
Giant Springs.....	\$3.....	\$ .50
Hell Creek.....	\$3.....	\$ .50
Holter Lake.....	\$3.....	\$ .50
Lake Mary Ronan.....	\$3.....	\$ .50
Lewis and Clark Caverns.....	\$3.....	\$ .50
Lone Pine.....	\$3.....	\$ .50
Madison Buffalo Jump.....	\$3.....	\$ .50
Makoshika.....	\$3.....	\$ .50
Medicine Rocks.....	\$3.....	\$ .50
Missouri Headwaters.....	\$3.....	\$ .50
Painted Rocks.....	\$3.....	\$ .50
Thompson Lakes: Logan area only.....	\$3.....	\$ .50
Tongue River Reservoir.....	\$3.....	\$ .50
Whitefish Lake.....	\$3.....	\$ .50

Single Visit Rates for Parks Open May 1 through November 30:

Lost Creek.....	\$3.....	\$ .50
Placid Lake - Salmon Lake.....	\$3.....	\$ .50

Single Visit Rates for Parks Open May 1 through Sept. 30:

Beavertail Hill.....	\$3.....	\$ .50
Hauser Lake (Black Sandy).....	\$3.....	\$ .50
Chief Plenty Coups.....	\$3.....	\$ .50
Flathead Lake: Big Arm, Finley Point, Wild Horse Island.....	\$3.....	\$ .50
Frenchtown Pond.....	\$3.....	\$ .50
Greycliff Prairie Dog Town.....	\$3.....	\$ .50
Pictograph Caves.....	\$3.....	\$ .50
Thompson Falls.....	\$3.....	\$ .50

SPECIAL FEE PARKS

- Lake Elmo and Spring Meadow are designated special fee parks.
- State Park Passport: Covers day use fees for all occupants of a non-commercial vehicle.
- Persons in vehicles without valid passport, walk-ins, bicycles, motorcycles, or bus passengers:
 

Age 10 and below	\$ .50 each
Age 11 and above	\$1.00 each
- Fees are collected at Lake Elmo from May 1 to September 30.
- Fees are collected at Spring Meadow year round.

RECREATION USE FEES AND SPECIAL CHARGES

PARK AND CAMPGROUND	RECREATION USE FEE
Ackley Lake	
Campground . . . . .	\$ 8
Group use areas--minimum . . . . .	\$25
Bannack	
Campground . . . . .	\$8
Group use area--minimum . . . . .	\$25
Beavertail Hill	
Campground . . . . .	\$9
Blackfoot River	
Group use area:	
Johnsrud Park--minimum . . . . .	\$25
Black Sandy	
Campground . . . . .	\$8
Canyon Ferry	
Campgrounds:	
Chinamans . . . . .	\$8
Court Sheriff & Ponderosa . . . . .	\$8
Hellgate . . . . .	\$8
Indian Road . . . . .	\$8
Jo Bonner . . . . .	\$8
Overlook . . . . .	\$7
Riverside . . . . .	\$8
Silos . . . . .	\$8
White Earth . . . . .	\$8
Group use areas:	
Chalet--minimum . . . . .	\$25
Hellgate--minimum . . . . .	\$25
Silos--minimum . . . . .	\$25
Cooney	
Campground . . . . .	\$ 7
Flathead Lake:	
Campgrounds:	
Big Arm developed . . . . .	\$ 9
Big Arm primitive (tents only) . . . . .	\$ 7
Elmo developed . . . . .	\$ 9
Elmo primitive (tents only) . . . . .	\$ 7
Finley Point . . . . .	\$ 8
Wayfarers developed . . . . .	\$ 9
Wayfarers primitive (tents only) . . . . .	\$ 7
West Shore . . . . .	\$ 8
Yellow Bay (tents only) . . . . .	\$ 7
Bicycle - hourly . . . . .	\$ 3
half day . . . . .	\$ 8
full day . . . . .	\$12
Boat tours - Wild Horse Island--adults . . . . .	\$ 8
children (6-11 yrs.) . . . . .	\$ 4



Boat mooring - buoy . . . . .	\$ 4
- dock . . . . .	\$ 5
Canoe/rowboat - hourly . . . . .	\$ 5
half day . . . . .	\$10
full day . . . . .	\$20
Extra vehicle in campground . . . . .	\$ 2
Group use areas:	
Big Arm--minimum . . . . .	\$25
Wayfarers--minimum . . . . .	\$25
Yellow Bay--minimum . . . . .	\$25
Shower . . . . .	\$ .25
Utilities (hook-ups) . . . . .	\$ 3
Giant Springs	
Group use area--minimum . . . . .	\$25
Hell Creek	
Campground . . . . .	\$ 7
Group use area--minimum . . . . .	\$25
Holter Lake	
Campgrounds:	
Departure Point . . . . .	\$ 7
Log Gulch . . . . .	\$ 8
Lake Mary Ronan	
Campground . . . . .	\$ 8
Extra vehicle . . . . .	\$ 2
Lewis & Clark Caverns	
Campground . . . . .	\$ 9
Showers . . . . .	\$ .25
Group use area--minimum . . . . .	\$25
Guided tours--adults . . . . .	\$5.50
Children (6-11 years) . . . . .	\$3
Group rate/per person . . . . .	\$ 3
(6 yrs. & older, 15 or more people with reservations)	
Lone Pine	
Group use area--minimum . . . . .	\$25
Meeting room (per day, includes day	
use fee)	
hourly . . . . .	\$15
minimum . . . . .	\$30
maximum . . . . .	\$125
Lost Creek	
Campground . . . . .	\$ 8
Makoshika	
Campground . . . . .	\$ 8
Medicine Rocks . . . . .	\$ 7
Missouri Headwaters	
Campground . . . . .	\$ 8
Group use area--minimum . . . . .	\$25
Painted Rocks	
Campground . . . . .	\$ 8
Placid Lake	
Campground . . . . .	\$ 9
Group use area--minimum . . . . .	\$25

Salmon Lake		
Campground . . . . .		\$ 9
Thompson Falls		
Campground . . . . .		\$ 8
Extra vehicle . . . . .		\$ 2
Thompson Lakes: Logan		
Campground . . . . .		\$ 9
Extra vehicle . . . . .		\$ 2
Canoe/rowboat		
hourly . . . . .		\$ 5
half day . . . . .		\$10
full day . . . . .		\$20
Tongue River Reservoir		
Campground . . . . .		\$ 7
Whitefish Lake		
Campsite, developed . . . . .		\$ 9
Campsite, primitive (tents only) . . . . .		\$ 7
Group use area--minimum . . . . .		\$25
Bicycle - hourly . . . . .		\$ 3
half day . . . . .		\$ 8
full day . . . . .		\$12
Canoe/rowboat		
hourly . . . . .		\$ 5
half day . . . . .		\$10
full day . . . . .		\$20

**FISHING ACCESS CAMPGROUNDS:**

Craig . . . . .	\$ 5
East Rosebud . . . . .	\$ 5
Eight Mile . . . . .	\$ 4
Ennis . . . . .	\$ 5
Harrison Lake . . . . .	\$ 4
Harpers Lake . . . . .	\$ 4
Intake . . . . .	\$ 5
Looking Glass . . . . .	\$ 5
Russell Gates . . . . .	\$ 5
Valley Garden . . . . .	\$ 4
Varney Bridge . . . . .	\$ 4

**OFF SEASON CAMPING: (Oct. 1 through April 30)**

Open state parks:           \$4 per night with state park passport  
                                   \$7 per night without state park passport

Open fishing  
 access sites:               \$4 per night

**OVERNIGHT CAMPING FEES:** Include 4% accommodation tax for tourism promotion as per Section 15-65-101 MCA, and applicable day use fee for vehicles without state park passport.

CAMPING CASH CARDS: Are sold only at the Helena headquarters and all regional offices of the department from December 1 through September 30 for the price of \$20 per book. Camping Cash Cards are non-refundable, and will not be replaced if lost or stolen. Camping Cash Cards have no expiration date.

DESIGNATED GROUP USE AREA FEES (paid in addition to day use fees):

<u>Group Size</u>	<u>Use Fee</u>	<u>Cleaning Deposit</u>
Under 30	\$ 25	\$ 20
30 - 50	\$ 50	\$ 50
51 - 100	\$ 75	\$100
101 - 200	\$100	\$200

Groups of over 200: Pay \$100 use fee plus \$75 for each additional unit of up to 100 people. Cleaning deposit is \$200 plus \$75 for each additional unit of up to 100 people.

OTHER SPECIAL RECREATION PERMIT FEES: To be determined on a case-by-case basis.

Other Charges

Surcharge assessed to persons who do not display a valid permit at areas with self-service fee stations (for all areas except Smith River) . . . . .	\$2
Surcharge for Smith River (only) . . . . .	\$10/person
Charge for checks returned because of insufficient funds . .	\$15
Campfire wood--per bundle . . . . .	\$2
Duplicate state park passport (for lost or confiscated passports) . . . . .	\$7.50
Campsite Reservation fee . . . . .	\$5

X. SMITH RIVER

A. Registration

1. There is a voluntary pre-registration system operated out of the Great Falls regional office for floaters on the Smith River. Pre-registration will become mandatory if use limits are adopted.
2. There is a year-round mandatory registration system at Camp Baker to float the Smith River. Self registration is required when river rangers are not available.

B. Boat Identification

1. Waterproof tags will be issued to each vessel when the fees are paid. Each vessel must display a tag while on the river.

C. Group Size

1. Maximum group size is 15 people (including guides and other outfitter staff). A bona fide group has shared planning and expenses for the trip, generally remains together while traveling to and on the river, and has a distinct and identifiable kitchen and camping unit.
2. Educational groups - organized tours or outings conducted for educational or scientific purposes may, on a case-by-case basis, qualify for an exemption of group size limits and fees if:
  - The group is not outfitted.
  - The educational or scientific purpose is related to the resources of the Smith River.
  - The group pre-registers at least 30 days in advance.
  - The group is from a bona fide institution established for these purposes.
  - The group applies for and receives an exemption by submitting documentation of their official recognition as an educational or scientific institution and a statement as to the purpose of their proposed visit.
  - The use for which the exemption is proposed is not primarily for recreational purposes.

D. Fees

1. Recreational user fee is \$15 per person per trip age 12 and up. There is no fee for children age 11 and under.

2. Commercial User Fee

\$15 for each client, outfitter and outfitter staff plus a \$175 fee for each trip with no annual registration fee.

3. Full fees paid May 1 - September 30. Half price fees in April and October. No fees from November to March.
4. Fees may be paid at the Great Falls Fish, Wildlife & Parks regional headquarters or at Camp Baker.
5. Bona fide landowners and immediate family usage:
  - Pay appropriate recreational user fee only if floating overnight.
  - Must register for overnight and day floats either by telephone, mail, or in person. A bona fide landowner is a person who owns land bordering the Smith River anywhere between Camp Baker and Eden Bridge.
6. The equivalent amount of outfitter fees owed and paid to the U.S. Forest Service for each season will be credited to the outfitter should the Forest Service not terminate their fee collection system on the Smith River. All balances will be cleared by the department by December 31st of each year and refunds issued if appropriate.



## APPENDIX 6





3.1 RULES AND REGULATIONS FOR THE FEDERAL AID IN FISH AND WILDLIFE RESTORATION PROGRAMS (50 CFR Part 80)

**PART 80—ADMINISTRATIVE REQUIREMENTS, FEDERAL AID IN FISH AND FEDERAL AID IN WILDLIFE RESTORATION ACTS**

- Sec.
- 80.1 Definitions.
  - 80.2 Eligibility.
  - 80.3 Assent legislation.
  - 80.4 Diversion of license fees.
  - 80.5 Eligible undertakings.
  - 80.6 Prohibited activities.
  - 80.7 Appeals.
  - 80.8 Availability of funds.
  - 80.9 Notice of desire to participate.
  - 80.10 Hunting and fishing license certification.
  - 80.11 Submission of proposals.
  - 80.12 Cost sharing.
  - 80.13 Substantiality in character and design.
  - 80.14 Application of Federal Aid funds.
  - 80.15 Allowable costs.
  - 80.16 Federal Aid payments.
  - 80.17 Maintenance.
  - 80.18 Responsibilities.
  - 80.19 Records.
  - 80.20 Land control.
  - 80.21 Assurances.
  - 80.22 Audits.
  - 80.23 Allocation of funds between marine and freshwater fishery projects.
  - 80.24 Recreational boating access facilities.
  - 80.25 Multiyear financing under the Federal Aid in Sport Fish Restoration Program.

**AUTHORITY:** Federal Aid in Fish Restoration Act (16 U.S.C. 777i) and Federal Aid in Wildlife Act (16 U.S.C. 669i).

**SOURCE:** 47 FR 22539, May 25, 1982, unless otherwise noted.

**NOTE:** The information collection requirements in this part have been approved by the Office of Management and Budget under control number 1018-0048.

**§ 80.1 Definitions.**

As used in this part, terms shall have the following meanings:

(a) *The Federal Aid Acts or the Acts.* The Federal Aid in Wildlife Restoration Act of September 2, 1937, as amended (50 Stat. 917; 16 U.S.C. 669-669i), and the Federal Aid in Sport Fish Restoration Act of August 9, 1950, as amended (64 Stat. 430; 16 U.S.C. 777-777k).

(b) *State.* Any State of the United States; the territorial areas of Guam, the Virgin Islands, and American Samoa; the Commonwealth of Puerto Rico, the District of Columbia, and the Commonwealth of the Northern Mariana Islands.

(c) *State fish and wildlife agency.* The agency or official of a State designated under State law or regulation to carry out the laws of the State in relation to the management of fish and wildlife resources of the State. Such an agency or official which is also designated to exercise collateral responsibilities, e.g., State Department of Natural Resources, shall be considered the State fish and wildlife agency only when exercising the responsibilities specific to the management of the fish and wildlife resources of the State.

(d) *Secretary.* The Secretary of the Interior or his designated representative.

(e) *Director.* The Director of the U.S. Fish and Wildlife Service, or his designated representative. The Director serves as the Secretary's representative in matters relating to the administration and execution of the Federal Aid Acts.

(f) *Regional Director.* The Regional director of the U.S. Fish and Wildlife Service, or his designated representative.

(g) *Federal Aid Manual.* The publication of the U.S. Fish and Wildlife Service which contains policies, standards and procedures required for participation in the benefits of the Acts.

(h) *Project.* A program of related undertakings necessary to fulfill a defined need which is consistent with the purposes of the Act.

(i) *Comprehensive fish and wildlife management plan.* A document describing the State's plan for meeting the long-range needs of the public for fish and wildlife resources, and the system for managing the plan.

(j) *Federal Aid Funds.* Funds provided under Federal Aid Acts.

(k) *Resident angler.* A resident angler is one who fishes within the same State where legal residence is maintained.

(l) *Common horsepower.* Common horsepower is defined as any size motor that can be reasonably accommodated on the body of water slated for development.

(47 FR 22539, May 25, 1982, as amended at 80 FR 21446, May 24, 1985)

**§ 80.2 Eligibility.**

Participation in the benefits of the Acts is limited to State fish and wildlife agencies as specified below:

(a) Federal Aid in Sport Fish Restoration—Each of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa.

(b) Federal Aid in Wildlife Restoration—Each of the 50 States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, and the Virgin Islands; except that the benefits afforded by section 4(b) of the Act relating to hunter education projects are limited to the 50 States.

[47 FR 22539, May 25, 1982, as amended at 50 FR 21448, May 24, 1985]

#### § 80.3 Assent legislation.

A State may participate in the benefits of the Act(s) only after it has passed legislation which assents to the provisions of the Acts and has passed laws for the conservation of fish and wildlife including a prohibition against the diversion of license fees paid by hunters and sport fishermen to purposes other than administration of the fish and wildlife agency. Subsequent legislation which amends these state laws shall be subject to review by the Secretary. If the legislation is found contrary to the assent provisions, the State shall become ineligible.

#### § 80.4 Diversion of license fees.

Revenues from fees paid by hunters and sports fishermen shall not be diverted to purposes other than administration of the State fish and wildlife agency. Administration of the State fish and wildlife agency includes only those functions of such an organization in exercising its authorities and responsibilities to manage the fish and wildlife resources of the State.

(a) A diversion of license fees occurs when a State fish and wildlife agency, through legislation or otherwise:

(1) Loses control of the expenditure of any portion of its license revenues, or

(2) Loses control of capital assets (or income therefrom) derived from license revenues, or

(3) Expends license revenues for any purpose other than administration of the State fish and wildlife agency.

(b) If a diversion of license fees occurs, the State becomes ineligible to participate under the pertinent Act from the date the diversion is declared by the Director until:

(1) Control of expenditure or assets is returned, and

(2) An amount equal to license revenues or the current market value of assets diverted is returned.

~~(c) Federal funds obligated for projects approved prior to the date a diversion is declared remain available for expenditure on such projects without regard to the intervening period of the State's ineligibility.~~

#### § 80.5 Eligible undertakings.

The following are eligible for funding under the Acts:

(a) Federal Aid in Wildlife Restoration Act (1) Projects having as their purpose the restoration, conservation, management, and enhancement of wild birds and wild mammals, and the provision for public use of and benefits from these resources.

(2) Projects having as their purpose the education of hunters and archers in the skills, knowledges, and attitudes necessary to be a responsible hunter or archer.

(b) Federal Aid in Sport Fish Restoration Act (1) Projects having as their purpose the restoration, conservation, management, and enhancement of sport fish, and the provision for public use and benefits from these resources. Sport fish are limited to aquatic, gill-breathing, vertebrate animals, bearing paired fins, and having material value for sport or recreation.

(2) Additional funds resulting from expansion of the Sport Fish Restoration Program must be added to existing State fishery program funds available from traditional sources and not as a substitute therefor.

[47 FR 22539, May 25, 1982, as amended at 50 FR 21448, May 24, 1985]

#### § 80.6 Prohibited activities.

The following are not eligible for funding under the Acts, except when necessary for the accomplishment of project purposes as approved by the regional director.

(a) Law enforcement activities conducted by the State to enforce the fish and game regulations.

(b) Public relations activities conducted to promote the State fish and wildlife agency.

#### § 80.7 Appeals.

Any difference of opinion over the eligibility of proposed activities or differences arising over the conduct of work may be appealed to the Director. Final determination rests with the Secretary.

#### § 80.8 Availability of funds.

Funds are available to a State for obligation or expenditure during the fiscal year for which they are apportioned and until the close of the succeeding fiscal year. For the purpose of

See attached revision

## 50 CFR Part 80

Federal Aid in Sport Fish Restoration  
and Federal Aid in Wildlife Restoration  
Act; Interest Earned from License  
Fees

AGENCY: Fish and Wildlife Service,  
Interior

ACTION: Final rule

**SUMMARY:** On August 5, 1988, the U.S. Fish and Wildlife Service published a proposed rule in the Federal Register (53 CFR 29500) proposing that interest earned on revenues derived from license fees paid by hunters and fishermen be considered by the Secretary of the Interior as license fee revenue for purposes of the Federal Aid in Wildlife Restoration (Pittman-Robertson and Federal Aid in Sport Fish Restoration (Dingell-Johnson) Acts. It also clarified situations causing diversions, defined other assets acquired by license fees, and identified sources of license revenues affected by the proposed rule. This action requires States to use interest earned on hunting and fishing license revenues for fish and wildlife resource management as a condition to remain eligible to receive Federal Aid

(Pittman-Robertson or Dingell-Johnson) funds.

**EFFECTIVE DATE:** Provisions of this rule will become effective on May 17, 1989 except that those States that will require legislative action to implement requirements relating to the disposition of interest revenues will be allowed up to three years from this date to get such authorization.

**FOR FURTHER INFORMATION CONTACT:** Conley Moffett, Chief, Division of Federal Aid, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone (703) 235-1526.

**SUPPLEMENTARY INFORMATION:** Both the Federal Aid in Wildlife Restoration (16 U.S.C. 669, *et seq.*) and Federal Aid in Sport Fish Restoration (16 U.S.C. 777, *et seq.*) Acts contain provisions requiring that no money may be apportioned to a State unless that State has passed laws assenting to the provisions of the pertinent Act and has passed laws for conservation of wildlife and fish. Such laws must contain a prohibition against diversion of license fees paid by hunters and fishermen for any other purpose than the administration of the State fish and wildlife agency. This rule clarifies previously undefined Department of the Interior rules in accord with the generally-accepted principle that interest should accrue to principal from which it was generated.

The Federal Aid in Wildlife Restoration Act and Federal Aid in Sport Fish Restoration Act require that as a prerequisite to receiving federal funds, States must prevent diversions of

license fees derived from fishermen and hunters to any purpose other than "the administration of said State game and fish department." The previous rule promulgated under authority of the Acts (50 CFR 80.4) stated that "[a] diversion of license fees occurs when a State fish and wildlife agency, through legislation or otherwise: (1) Loses control of the expenditure of any portion of its license revenues, or (2) Loses control of capital assets (or income therefrom) derived from license revenues . . ." Because of the increased complexity of State government and the variety of responsibilities assigned to fish and wildlife agencies, the requirements relating to control of assets and expenditures involve an increased number of controls at higher levels in the State. Accordingly, this new rule does not require that fish and wildlife agencies have complete control over license funds, but, instead, that license revenues must be used by State fish and wildlife agencies only to manage fish and wildlife resources that they have authority by the State law to manage.

The Department has determined that this rule is not a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act and, therefore, the preparation of an Environmental Impact Statement is not required.

This rule is not a major rule under Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5

U.S.C. 601). The annual effect on the economy will be less than the threshold required for a major rule, no major increase in costs or prices will occur, and no significant effects on competition, employment, investment, productivity, innovation are expected. This rule does not contain any recordkeeping or information collection requirements requiring Office of Management and Budget approval under the Paperwork Reduction Act of 1980.

This rule was published as a proposed rule on August 5, 1988 (53 CFR 29500) and comments were invited until September 19, 1988. A total of 44 comments were received: 18 from State fish and wildlife agencies, 19 from State conservation organizations, 6 from National conservation organizations, and 1 from a private citizen. Of the 44 comments, 3 States expressed opposition to the portion that related to the requirement that interest earned on license revenues be regarded as license revenues. No negative comments were received from the other groups.

The 3 States expressed concern that claiming money derived from interest would jeopardize their existing appropriations from the general fund or that they would be assessed higher costs for State overhead than they are presently foregoing and that the rule would require the cost of additional accounting. We recognized that the rules could have negative impacts on several States but judged that significantly greater numbers of States would benefit from it. Income from interest had become a significant source of revenue for most agencies. The Wildlife Conservation Fund of America survey of 1987 shows that the number of States receiving interest from license revenues has increased from 18 to 36 in the 7 year period from the prior survey to the last one in 1986. The total interest was about 22 million dollars in 1986.

Many commentors asked for clarification of the effective date. The effective date of this revision is 30 days after publication in the Federal Register. However, it is recognized that some States may need to enact legislation to meet the requirements of this provision. Therefore, for those States a period not to exceed 3 years after the effective date of the rule will be allowed in order to enact the needed legislation. All other States will need to be in compliance, and remain in compliance, on or after the effective date. The 3 year period was generally accepted by most commentors.

Most of the State conservation organizations suggested that income derived from license revenue funded law enforcement activities such as fines, penalties, and sales of confiscated equipment be defined as license revenues for purposes of this rule. This suggestion was not adopted because it was judged that the Secretary was not given this authority by legislation.

Commentors also suggested that fees charged on recreation areas that are managed by the State using license revenues such as camping, boat launching, and parking be included in the term "access fees" in section (a)(1). The final rule had been changed to "access and recreation fees" to clarify this intent.

Some commentors suggested that the proceeds of leases of lands be treated as license revenues like the sale of lands. That suggestion was incorporated in section (a)(2).

The principal author of this proposal is Thomas W. Taylor, Division of Federal Aid, U.S. Fish and Wildlife Service.

#### List of Subjects in 50 CFR Part 80

Fish grant program, Natural Resources, Grant administration, and wildlife.

Accordingly, 50 CFR 80 is amended as follows:

#### PART 80—[AMENDED]

1. Authority for 50 CFR 80 continues to read as follows:

Authority: Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777i) and Federal Aid in Wildlife Restoration Act (16 U.S.C. 669i).

2. Part 80 is amended by revising § 80.4 to read as follows:

##### § 80.4 Diversion of license fees.

Revenues from license fees paid by hunters and fishermen shall not be diverted to purposes other than administration of the State fish and wildlife agency.

(a) Revenues from license fees paid by hunters and fishermen are any revenues the State receives from the sale of licenses issued by the State conveying to a person the privilege to pursue or take wildlife or fish. For the purpose of this rule, revenue with respect to license sales by vendors, is considered to be the net income to the State after deducting reasonable vendor fees or similar amounts retained by sales agents. License revenues include income from:

(1) General or special licenses, permits, stamps, tags, access and recreation fees or other charges imposed by the State to hunt or fish for sport or recreation.

(2) Sale, lease, rental, or other granting of rights of real or personal property acquired or produced with license revenues. Real property includes, but is not limited to, lands, building, minerals, energy resources, timber, grazing, and animal products. Personal property includes, but is not limited to, equipment, vehicles, machine, tools, and annual crops.

(3) Interest, dividends, or other income earned on license revenues.

(4) Federal Aid project reimbursements to the States to the extent that license revenues originally funded the project for which the reimbursement is being made.

(b) For purposes of this rule, administration of the State fish and wildlife agency include only those functions required to manage the fish and wildlife-oriented resources of the State for which the agency has authority under State law.

(c) A diversion of license fee revenues occurs when any portion of license revenues is used for any purpose other than the administration of the State fish and wildlife agency.

(d) If a diversion of license revenues occurs, the State becomes ineligible to participate under the pertinent Act from the date the diversion is declared by the Director until:

(1) Adequate legislative prohibitions are in place to prevent diversion of license revenue, and

(2) All license revenues or assets acquired with license revenues are restored, or an amount equal to license revenue diverted or current market value of assets diverted (whichever is greater) is returned and properly available for use for the administration of the State fish and wildlife agency.

(e) Federal funds obligated for projects approved prior to the date a diversion is declared remain available for expenditure on such projects without regard to the intervening period of the State's ineligibility.

Date: February 17, 1989.

Becky Norton Dunlop,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-9089 Filed 4-14-89; 8:45 am]

BILLING CODE 4310-55-M

this section, obligation of apportioned funds occurs when a project agreement is signed by the regional director.

**§ 80.9 Notice of desire to participate.**

Any State fish and wildlife agency desiring to avail itself of the benefits of the Acts shall notify the Secretary within 60 days after it has received a certificate of apportionment of funds available to the State. Notification to the Secretary may be accomplished by either of the following methods. In either method, the document must be signed by a State official authorized to commit the State to participation under the Act(s).

(a) Submitting to the regional director within the 60-day period a letter stating the desire of the State to participate in the Act(s); or,

(b) Having an approved Application for Federal Assistance which contains plans for the use of Federal Aid funds during the period of the apportionment.

**§ 80.10 Hunting and fishing license certification.**

(a) Information concerning the number of persons holding paid licenses to hunt and the number of persons holding paid licenses to fish for sport or recreation in the State in the preceding year shall be furnished upon request of the Director by the fish and wildlife agency of each State on forms furnished by the Fish and Wildlife Service.

(b) This information shall be certified as accurate by the director of the State fish and wildlife agency. When requested by the Director, evidence used in determining accuracy of the certification shall also be furnished.

(c) License holders shall be counted over a period of 12 months; the calendar year, fiscal year, or other licensing period may be used provided it is consistent from year to year in each State. In determining licenses which are eligible for inclusion, the following guidelines shall be observed.

(1) Trapping licenses, commercial licenses, and other licenses which are not for the express purpose of permitting the holder to hunt or fish for sport or recreation shall not be included.

(2) Licenses which do not return net revenue to the State shall not be included. To qualify as a paid license, the fee must produce revenue for the State. Net revenue is any amount returned to the State after deducting agent or sellers fees and the cost for printing, distribution, control or other costs directly associated with the issuance of each license.

(3) Licenses valid for more than one year, either a specific or indeterminate number of years, may be counted in each of the years for which they are valid; provided that:

(i) The net revenue from each license is commensurate with the period for which hunting or fishing privileges are granted, and

(ii) Sampling or other techniques are used to determine whether the licensee remains a license holder in the year of certification.

(4) Combination fishing and hunting licenses (a single license which permits the holder both to hunt and fish) shall be included in the determination of both the number of paid hunting license holders and the number of persons holding paid licenses to fish for sport or recreation.

(5) Some licensing systems require or permit an individual to hold more than one license to hunt or to fish in a State. Such an individual shall not be counted more than once as a hunting or fishing license holder. The State fish and wildlife director, in certifying license information to the Director, is responsible for eliminating duplication or multiple counting of single individuals in the figures which he certifies. Sampling and other statistical techniques may be utilized by the certifying officer for this purpose.

(Approved by the Office of Management and Budget under control number 1018-0007)

**§ 80.11 Submission of proposals.**

A State may make application for use of funds apportioned under the Acts by submitting to the regional director either a comprehensive fish and wildlife management plan or project proposal.

(a) Each application shall contain such information as the regional director may require to determine if the proposed activities are in accordance with Acts, the provisions of this part, and the standards contained in the Federal Aid Manual.

(b) Each application and amendments of scope shall be submitted to the State Clearinghouse as required by Office of Management and Budget (OMB) Circular A-95 and by State Clearinghouse requirements.

(c) Applications must be signed by the director of the State fish and wildlife agency or the official(s) delegated to exercise the authority and responsibilities of the State's director in committing the State to participation under the Acts. The director of each State fish and wildlife agency shall notify the regional director, in writing, of the official(s) authorized to sign Federal Aid documents, and any changes in such authorizations.

**§ 80.12 Cost sharing.**

Federal participation is limited to 75 percent of eligible costs incurred in the completion of approved work or the Federal share specified in the project agreement, whichever is less, except that the non-Federal cost sharing for the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa shall not exceed 25 percent and may be waived at the discretion of the regional director.

(a) A minimum Federal participation of 10 percent of the estimated costs is required as a condition of approval.

(b) The non-Federal share of project costs may be in the form of cash or in-kind contributions. The allowability and evaluation of in-kind contributions are subject to the policies and standards prescribed in Office of Management and Budget (OMB) Circular A-102.

(c) The non-Federal share of project costs may not be derived from other Federal funds, except as authorized by specific legislation.

**§ 80.13 Substantiality in character and design.**

All projects proposed for funding under the Acts must be substantial in character and design. A substantial project (for fish and wildlife purposes) is one which:

(a) Identifies and describes a need within the purposes of the relevant Act to be utilized;

(b) Identifies the objectives to be accomplished based on the stated need;

(c) Utilizes accepted fish and wildlife conservation and management principles, sound design, and appropriate procedures; and

(d) Will yield benefits which are pertinent to the identified need at a level commensurate with project costs.

**§ 80.14 Application of Federal aid funds.**

(a) Federal Aid funds shall be applied only to activities or purposes approved by the regional director. If otherwise applied, such funds must be replaced or the State becomes ineligible to participate.

(b) Real property acquired or constructed with Federal Aid funds must continue to serve the purpose for which acquired or constructed.

(1) When such property passes from management control of the fish and wildlife agency, the control must be fully restored to the State fish and wildlife agency or the real property must be replaced using non-Federal Aid funds. Replacement property must be of equal value at current market

prices and with equal benefits as the original property. The State may have a reasonable time, up to three years from the date of notification by the regional director, to acquire replacement property before becoming ineligible.

(2) When such property is used for purposes which interfere with the accomplishment of approved purposes, the violating activities must cease and any adverse effects resulting must be remedied.

(3) When such property is no longer needed or useful for its original purpose, and with prior approval of the regional director, the property shall be used or disposed of as provided by Attachment N of OMB Circular A-102.

(c) Federal Aid funds shall not be used for the purpose of producing income. However, income producing activities incidental to accomplishment of approved purposes are allowable. Income derived from such activities shall be accounted for in the project records and disposed of as directed by the Director.

**§ 80.15 Allowable costs.**

Allowable costs are limited to those which are necessary and reasonable for accomplishment of approved project purposes, and are in accordance with the cost principles of OMB Circular A-87.

(a) All costs must be supported by source documents or other records as necessary to substantiate the application of funds. Such documentation and records are subject to review by the Secretary to determine the allowability of costs.

(b) Costs incurred prior to the effective date of the project agreement are allowable only when specifically provided for in project agreement.

(c) Projects or facilities designed to include purposes other than those eligible under the pertinent Act shall provide for the allocation of costs among the various purposes. The method used to allocate costs shall produce an equitable distribution of costs based on the relative uses or benefits provided.

(d) Administrative costs in the form of overhead or indirect costs for State central services outside of the State fish and wildlife agency must be in accord with an approved cost allocation plan and shall not exceed in any one fiscal year three percentum of the annual apportionment.

(e) Not more than 10 per centum of the annual amount apportioned to each State under provisions of the Federal Aid in Sport Fish Restoration

Act may be obligated on projects for aquatic education.

147 FR 22539, May 25, 1982, as amended at 50 FR 21448, May 24, 1985)

#### § 80.16 Federal aid payments.

Payments shall be made for the Federal share of allowable costs incurred by the State in accomplishing approved projects.

(a) Requests for payments shall be submitted on forms furnished by the regional director.

(b) Payments shall be made only to the office or official designated by the State fish and wildlife agency and authorized under the laws of the State to receive public funds for the State.

(c) All payments are subject to final determination of allowability based on audit. Any overpayments made to the State shall be recovered as directed by the region director.

(d) The regional director may withhold payments pending receipt of all required reports or documentation for the project.

#### § 80.17 Maintenance.

The State is responsible for maintenance of all capital improvements acquired or constructed with Federal Aid funds throughout the useful life of each improvement. Costs for such maintenance are allowable when provided for in approved projects. The maintenance of improvements acquired or constructed with non-Federal Aid funds are allowable costs when such improvements are necessary to accomplishment of project purposes as approved by the regional director, and when such costs are otherwise allowable by law.

#### § 80.18 Responsibilities.

In the conduct of activities funded under the Acts, the State is responsible for:

(a) The supervision of each project to assure it is conducted as provided in the project documents, including:

- (1) Proper and effective use of funds.
- (2) Maintenance of project records.
- (3) Timely submission of reports.

(4) Regular inspection and monitoring of work in progress.

(b) The selection and supervision of project personnel to assure that:

(1) Adequate and competent personnel are available to carry the project through to a satisfactory and timely completion.

(2) Project personnel perform the work to ensure that time schedules are met, projected work units are accomplished, other performance objectives are being achieved, and reports are submitted as required.

(c) The accountability and control of all assets to assure that they serve the purpose for which acquired throughout their useful life.

(d) The compliance with all applicable Federal, State, and local laws.

(e) The settlement and satisfaction of all contractual and administrative issues arising out of procurement entered into.

#### § 80.19 Records.

The State shall maintain current and complete financial, property and procurement records in accordance with requirements contained in the Federal Aid Manual and OMB Circular A-102.

(a) Financial, supporting documents, and all other records pertinent to a project shall be retained for a period of three years after submission of the final expenditure report on the project. If any litigation, claim, or audit was started before the expiration of the three-year period, the records shall be retained until the resolution is completed. Records for non-expendable property shall be retained for a period of three years following final disposition of the property.

(b) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers and records of the State.

#### § 80.20 Land control.

The State must control lands or waters on which capital improvements are made with Federal Aid funds. Controls may be exercised through fee title, lease, easement, or agreement. Control must be adequate for protection, maintenance, and use of the improvement throughout its useful life.

#### § 80.21 Assurances.

The State must agree to and certify that it will comply with all applicable Federal laws, regulations, and requirements as they relate to the application, acceptance, and use of Federal funds under the Acts. The Secretary shall have the right to review or inspect for compliance at any time. Upon determination of noncompliance, the Secretary may terminate or suspend those projects in noncompliance, or may declare the State ineligible for further participation in program benefits until compliance is achieved.

#### § 80.22 Audits.

The State is required to conduct an audit at least every two years in accordance with the provisions of Attachment P of OMB Circular A-102.

Failure to conduct audits as required may result in withholding of grant payments or such other sanctions as the Secretary may deem appropriate.

(49 FR 30074, July 26, 1984)

**§ 80.23 Allocation of funds between marine and freshwater fishery projects.**

(a) Each coastal State, to the extent practicable, shall equitably allocate those funds specified by the Secretary, in the apportionment of Federal Aid in Sport Fish Restoration funds, between projects having recreational benefits for marine fisheries and projects having recreational benefits for freshwater fisheries.

(1) Coastal States are: Alabama, Alaska, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Oregon, Rhode Island, South Carolina, Texas, Virginia, Washington, Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(2) The allocation and subsequent obligation of funds between projects that benefit marine and freshwater interests will be in the same proportion as the estimated number of resident marine anglers and resident freshwater anglers, respectively, bears to the estimated number of total resident anglers in the State. The number of marine and freshwater anglers shall be based on a statistically reliable method for determining the relative distribution of resident anglers in the State between those that fish in saltwater and those that fish in freshwater.

(3) To the extent practicable means that the amounts allocated of each year's apportionment may not necessarily result in an equitable allocation for each year. However, the amounts allocated over a period, not to exceed 3 years, must result in an equitable allocation between marine and freshwater fisheries projects. Ongoing marine project costs can be applied toward the State's saltwater allocation.

(4) Failure to provide for an equitable allocation may result in the State's becoming ineligible to participate in the use of those funds specified, until such time as the State demonstrates to the satisfaction of the Director that funds will be allocated equitably.

(50 FR 21448, May 24, 1985)

**§ 80.24 Recreational boating access facilities.**

The State shall allocate at least 10 percentum of each annual apportionment under Federal Aid in Sport Fish

Restoration Act for recreational boating access facilities. All facilities constructed, acquired, developed, renovated, or maintained (including those existing structures for which maintenance is provided) must be for the purpose of providing additional, improved, or safer access of public waters for boating recreation as part of the State's effort for the restoration, management, and public use of sport fish. Though a broad range of access facilities and associated amenities can qualify for funding under the 10 percent provision, power boats with common horsepower ratings must be accommodated, and, in addition, the State must make reasonable efforts to accommodate boats with larger horsepower ratings if they would not conflict with aquatic resources management. Any portion of the 10 percent set aside for the above purposes that remains unexpended or unobligated after two years shall revert to FWS.

(50 FR 21448, May 24, 1985)

**§ 80.25 Multiyear financing under the Federal Aid in Sport Fish Restoration Program.**

(a) States may finance the acquisition of lands or interests in lands including water rights and the construction of structures and facilities utilizing multiyear funding as authorized by the Federal Aid in Sport Fish Restoration Act in two ways:

(1) States may finance the entire cost of the acquisition or construction from a non-Federal funding source and claim Federal Aid reimbursement in succeeding apportionment years according to a scheduled reimbursement plan.

(2) States may negotiate an installment purchase or contract whereby periodic and specified amounts are paid to the seller or contractor and Federal Aid reimbursements are allowed for each payment from any apportionment year current at the time of payment.

(b) Multiyear financing is subject to the following conditions:

(1) Projects must provide for prospective use of funds and be approved by the Regional Director in advance of the State's obligation or commitment to purchase property or contract for structures or facilities.

(2) States must agree to complete the project even if Federal funds are not available. In the event the project is not completed, those Federal funds expended but not resulting in commensurate sport fishery benefits must be recovered by the State and reallocated to approved State sport fish projects.



(3) Project proposals must include a complete schedule of payments to complete the project.

(4) No costs for interest or financing shall be claimed for reimbursement.

(50 FR 21448, May 24, 1985)



## APPENDIX 7



2.2 FEDERAL AID IN SPORT FISH RESTORATION ACT (DINGELL-JOHNSON ACT)  
OR FEDERAL AID IN FISH RESTORATION ACT)

Act of August 9, 1950 (64 Stat. 430), as amended (16 U.S.C. 777-777k)

FEDERAL-STATE RELATIONSHIPS

Sec. 1. (a) The Secretary of the Interior is authorized and directed to cooperate with the States through their respective State fish and game departments in fish restoration and management projects as hereinafter set forth: No money apportioned under this Act to any State, except as hereinafter provided, shall be expended therein until its legislature, or other State agency authorized by the State constitution to make laws governing the conservation of fish, shall have assented to the provisions of this Act and shall have passed laws for the conservation of fish, which shall include a prohibition against the diversion of license fees paid by fishermen for any other purpose than the administration of said State fish and game department, except that, until the final adjournment of the first regular session of the legislature held after passage of this Act, the assent of the governor of the State shall be sufficient. The Secretary of the Interior and the State fish and game department of each State accepting the benefits of this chapter shall agree upon the fish restoration and management projects to be aided in such State under the terms of this Act, and all projects shall conform to the standards fixed by the Secretary of the Interior.

(b) Each coastal state, to the extent practicable, shall equitably allocate the following sums between marine fish projects and freshwater fish projects in the same proportion as the estimated number of resident marine anglers and the estimated number of resident freshwater anglers, respectively, bear to the estimated number of all resident anglers in that State:

(1) The additional sums apportioned to such State under this Act as a result of the taxes imposed by the amendments made by section 1015 of the Tax Reform Act of 1984 on items not taxed under section 4161(a) of Title 26 before October 1, 1984.

(2) The sums apportioned to such State under this Act that are not attributable to any tax imposed by such section 4161(a).

As used in this subsection, the term "coastal State" means any one of the States of Alabama, Alaska, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Oregon, Rhode Island, South Carolina, Texas, Virginia, and Washington. The term also includes the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Marianas.

## DEFINITIONS

Sec. 2. For the purpose of this Act the term "fish restoration and management projects" shall be construed to mean projects designed for the restoration and management of all species of fish which have material value in connection with sport or recreation in the marine and/or fresh waters of the United States and include--

- (a) such research into problems of fish management and culture as may be necessary to efficient administration affecting fish resources;
- (b) the acquisition of such facts as are necessary to guide and direct the regulation of fishing by law, including the extent of the fish population, the drain on the fish supply from fishing and/or natural causes, the necessity of legal regulation of fishing, and the effects of any measures of regulation that are applied;
- (c) the formulation and adoption of plans of restocking waters with food and game fishes according to natural areas or districts to which such plans are applicable, together with the acquisition of such facts as are necessary to the formulation, execution, and testing the efficacy of such plans;
- (d) the selection, restoration, rehabilitation, and improvement of areas of water or land adaptable as hatching, feeding, resting, or breeding places for fish, including acquisition by purchase, condemnation, lease, or gift of such areas or estates or interests therein as are suitable or capable of being made suitable therefor, and the construction thereon or therein of such works as may be necessary to make them available for such purposes, and such preliminary or incidental costs and expenses as may be incurred in and about such works; the term "State fish and game department" shall be construed to mean and include any department or division of department of another name, or commission, or official or officials, of a State empowered under its laws to exercise the functions ordinarily exercised by a State fish and game department.

## AUTHORIZATION OF APPROPRIATIONS

Sec. 3. To carry out the provisions of this Act for fiscal years after September 30, 1984, there are authorized to be appropriated from the Sport Fish Restoration Account established by section 9504(a) of Title 26 the amounts paid, transferred, or otherwise credited to that Account. For purposes of the provision of the Act of August 31, 1951, which refers to this section, such amounts shall be treated as the amounts that are equal to the revenues described in this section. The appropriation made under the provisions of this section for each fiscal year shall continue available during the succeeding fiscal year. So much of such appropriation apportioned to any State for any fiscal year as remains unexpended at the close thereof is authorized to be made available for expenditure in that

State until the close of the succeeding fiscal year. Any amount apportioned to any State under the provisions of this Act which is unexpended or obligated at the end of the period during which it is available for expenditure on any project is authorized to be made available for expenditure by the Secretary of the Interior in carrying on the research program of the Fish and Wildlife Service in respect to fish of material value for sport and recreation.

FUNDS AVAILABLE FOR EXPENSES OF INVESTIGATIONS AND ADMINISTRATION;  
APPORTIONMENT OF FUNDS AMONG THE STATES

Sec. 4. So much, not to exceed 6 per centum, of each annual appropriation made in accordance with the provisions of section 3 of this Act as the Secretary of the Interior may estimate to be necessary for his expenses in the conduct of necessary investigations, administration, and the execution of this chapter and for aiding in the formulation, adoption, or administration of any compact between two or more States for the conservation and management of migratory fishes in marine or freshwaters shall be deducted for that purpose, and such sum is authorized to be made available therefor until the expiration of the next succeeding fiscal year. The Secretary of the Interior, after making the aforesaid deduction, shall apportion the remainder of the appropriation for each fiscal year among the several States in the following manner: 40 per centum in the ratio which the area of each State including coastal and Great lakes waters (as determined by the Secretary of the Interior) bears to the total area of all the States, and 60 per centum in the ratio which the number of persons holding paid licenses to fish for sport or recreation in the State in the second fiscal year preceding the fiscal year for which such apportionment is made, as certified to said Secretary by the State fish and game departments, bears to the number of such persons in all the States. Such apportionments shall be adjusted equitably so that no State shall receive less than 1 per centum nor more than 5 per centum of the total amount apportioned. Where the apportionment to any State under this section is less than \$4,500 annually, the Secretary of the Interior may allocate not more than \$4,500 of said appropriation to said State to carry out the purposes of this chapter when said State certifies to the Secretary of the Interior that it has set aside not less than \$1,500 from its fish-and-game funds or has made, through its legislature, an appropriation in this amount for said purposes. So much of any sum not allocated under the provisions of this section for any fiscal year is hereby authorized to be made available for expenditure to carry out the purposes of this Act until the close of the succeeding fiscal year, and if unexpended or unobligated at the end of such year, such sum is hereby authorized to be made available for expenditure by the Secretary of the Interior in carrying on the research program of the Fish and Wildlife Service in respect to fish of material value for sport or recreation. The term fiscal year as used in this section shall be a period of twelve consecutive months from October 1 through the succeeding September 30, except that the period for enumeration of persons holding licenses to fish shall be a State's fiscal or license year.

CERTIFICATION OF FUNDS DEDUCTED FOR EXPENSES AND AMOUNTS  
APPORTIONED TO STATES

Sec. 5. For each fiscal year beginning with the fiscal year ending June 30, 1951, the Secretary of the Interior shall certify to the Secretary of the Treasury, and to each State fish and game department, the sum which he has estimated to be deducted for administering and executing this Act and the sum which he has apportioned to each State for such fiscal year.

SUBMISSION AND APPROVAL OF PLANS AND PROJECTS

Sec. 6. (a) Any State desiring to avail itself of the benefits of this Act shall, by its State fish and game department, submit programs or projects for fish restoration in either of the following two ways:

(1) The State shall prepare and submit to the Secretary of the Interior a comprehensive fish and wildlife resource management plan which shall insure the perpetuation of these resources for the economic, scientific, and recreational enrichment of the people. Such plan shall be for a period of not less than five years and be based on projections of desires and needs of the people for a period of not less than fifteen years. It shall include provisions for updating at intervals of not more than three years and be provided in a format as may be required by the Secretary of the Interior. If the Secretary of the Interior finds that such plans conform to standards established by him and approves such plans, he may finance up to 75 per centum of the cost of implementing segments of those plans meeting the purposes of this Act from funds apportioned under this chapter upon his approval of an annual agreement submitted to him.

(2) A State may elect to avail itself of the benefits of this Act by its State fish and game department submitting to the Secretary of the Interior full and detailed statements of any fish restoration and management project proposed for that State. If the Secretary of the Interior finds that such project meets with the standards set by him and approves said project, the State fish and game department shall furnish to him such surveys, plans, specifications, and estimates therefor as he may require. If the Secretary of the Interior approves the plans, specifications, and estimates for the project, he shall notify the State fish and game department and immediately set aside so much of said appropriation as represents the share of the United States payable under this Act on account of such project, which sum so set aside shall not exceed 75 per centum of the total estimated cost thereof.

The Secretary of the Interior shall approve only such comprehensive plans or projects as may be substantial in character and design and the expenditure of funds hereby authorized shall be applied only to such approved comprehensive fishery plan or projects and if otherwise applied they shall be replaced by the State before it may participate in any further



apportionment under this Act. No payment of any money apportioned under this Act shall be made on any comprehensive fishery plan or project until an agreement to participate therein shall have been submitted to and approved by the Secretary of the Interior.

(b) If the State elects to avail itself of the benefits of this Act by preparing a comprehensive fish and wildlife plan under option (1) of subsection (a) of this section, then the term "project" may be defined for the purpose of this chapter as a fishery program, all other definitions notwithstanding.

(c) Administrative costs in the form of overhead or indirect costs for services provided by State central service activities outside of the State fish and game department charged against programs or projects supported by funds made available under this Act shall not exceed in any one fiscal year 3 per centum of the annual apportionment to the State.

(d) The Secretary of the Interior may enter into agreements to finance up to 75 per centum of the initial costs of the acquisition of lands or interests therein and the construction of structures or facilities for appropriations currently available for the purposes of this Act; and to agree to finance up to 75 per centum of the remaining costs over such a period of time as the Secretary may consider necessary. The liability of the United States in any such agreement is contingent upon the continued availability of funds for the purposes of this Act.

#### PAYMENTS OF FUNDS TO STATES

Sec. 7. (a) When the Secretary of the Interior shall find that any project approved by him has been completed or, if involving research relating to fish, is being conducted, in compliance with said plans and specifications, he shall cause to be paid to the proper authority of said State the amount set aside for said project. The Secretary of the Interior may, in his discretion, from time to time, make payments on said project as the same progresses; but these payments, including previous payments, if any, shall not be more than the United States' pro rata share of the project in conformity with said plans and specifications. If a State has elected to avail itself of the benefits of this chapter by preparing a comprehensive fish and wildlife plan as provided for under option (1) of subsection (a) of section 6 of this Act, and this plan has been approved by the Secretary of the Interior, then the Secretary may, in his discretion, and under such rules and regulations, as he may prescribe, advance funds to the State for financing the United States' pro rata share agreed upon between the State fish and game department and the Secretary.

(b) Any construction work and labor in each State shall be performed in accordance with its laws and under the direct supervision of the State fish and game department, subject to the inspection and approval of the Secretary of the Interior and in accordance with the rules and regulations made pursuant to this chapter. The Secretary of the Interior and the State fish and game department of each State may jointly determine at what

times and in what amounts payments shall be made under this Act. Such payments shall be made against the said appropriation to such official or officials, or depository, as may be designated by the State fish and game department and authorized under the laws of the State to receive public funds of the State.

MAINTENANCE OF PROJECTS, FACILITIES FOR BOATING ACCESS,  
AQUATIC RESOURCE EDUCATION

Sec. 8. (a) To maintain fish-restoration and management projects established under the provisions of this Act shall be the duty of the States according to their respective laws. Beginning July 1, 1953, maintenance of projects heretofore completed under the provisions of this chapter may be considered as projects under this Act. Title to any real or personal property acquired by any State, and to improvements placed on State-owned lands through the use of funds paid to the State under the provisions of this Act, shall be vested in such State.

(b) (1) Each State shall allocate 10 per centum of the funds apportioned to it for each fiscal year under section 4 of this Act for the payment of up to 75 per centum of the costs of the acquisition, development, renovation, or improvement of facilities (and auxiliary facilities necessary to insure the safe use of such facilities) that create, or add to, public access to the waters of the United States to improve the suitability of such waters for recreational boating purposes.

(2) So much of the funds that are allocated by a State under paragraph (1) in any fiscal year that remained unexpended or unobligated at the close of such year are authorized to be made available for the purposes described in paragraph (1) during the succeeding fiscal year, but any portion of such funds that remain unexpended or unobligated at the close of such succeeding fiscal year are authorized to be made available for expenditure by the Secretary of the Interior in carrying out the research program of the Fish and Wildlife Service in respect to fish of material value for sport or recreation.

(c) Each State may use not to exceed 10 per centum of the funds apportioned to it under section 4 of this Act to pay up to 75 per centum of the costs of an aquatic resource education program for the purpose of increasing public understanding of the Nation's water resources and associated aquatic life forms. The non-Federal share of such costs may not be derived from other Federal grant programs. The Secretary shall issue not later than the one hundred and twentieth day after the effective date of this subsection such regulations as he deems advisable regarding the criteria for such programs.

## EMPLOYMENT OF PERSONNEL

Sec. 9. Out of the deductions set aside for administering and executing this Act the Secretary of the Interior is authorized to employ such assistants, clerks and other persons in the District of Columbia and elsewhere, to be taken from the eligible lists of the civil service; to rent or construct buildings outside of the District of Columbia; to purchase such supplies, materials, equipment, office fixtures, and apparatus; and to incur such travel and other expenses, including publication of technical and administrative reports, purchase, maintenance, and hire of passenger-carrying motor vehicles, as he may deem necessary for carrying out the provisions of this Act.

## RULES AND REGULATIONS

Sec. 10. The Secretary of the Interior is authorized to make rules and regulations for carrying out the provisions of this Act.

## REPORTS TO CONGRESS

Sec. 11. Repealed. Pub. L. 89-348, Nov. 8, 1965, 79 Stat. 1311

## PAYMENT OF FUNDS TO AND COOPERATION WITH PUERTO RICO, DISTRICT OF COLUMBIA, GUAM, AMERICAN SAMOA, COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS, AND VIRGIN ISLANDS

Sec. 12. The Secretary of the Interior is authorized to cooperate with the Secretary of Agriculture of Puerto Rico, the Mayor of the District of Columbia, the Governor of Guam, the Governor of American Samoa, the Governor of the Commonwealth of the Northern Mariana Islands, and the Governor of the Virgin Islands, in the conduct of fish restoration and management projects, as defined in section 2 of this Act, upon such terms and conditions as he shall deem fair, just, and equitable, and is authorized to apportion to Puerto Rico, the District of Columbia, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands, out of money available for apportionment under this chapter, such sums as he shall determine, not exceeding for Puerto Rico 1 per centum, for the District of Columbia one-third of 1 per centum, for Guam one-third of 1 per centum, for American Samoa one-third of 1 per centum, for the Commonwealth of the Northern Mariana Islands one-third of 1 per centum, and for the Virgin Islands one-third of 1 per centum of the total amount apportioned in any one year, but the Secretary shall in no event require any of said cooperating agencies to pay an amount which will exceed 25 per centum of the cost of any project. Any unexpended or unobligated balance of any apportionment made pursuant to this section shall be made available for expenditure in Puerto Rico, the District of Columbia, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the

Virgin Islands, as the case may be, in the succeeding year, on any approved projects, and if unexpended or unobligated at the end of such year is authorized to be made available for expenditure by the Secretary of the Interior in carrying on the research program of the Fish and Wildlife Service in respect to fish of material value for sport or recreation.

## 2.1 FEDERAL AID IN WILDLIFE RESTORATION ACT (PITTMAN-ROBERTSON ACT)

Act of September 2, 1937 (50 Stat. 917), as amended (16 U.S.C. 669-669b, 669c-669i)

### COOPERATION OF SECRETARY OF THE INTERIOR WITH STATES: CONDITIONS

Section 1. The Secretary of the Interior is authorized to cooperate with the States, through their respective State fish and game departments, in wildlife-restoration projects as hereinafter set forth; but no money apportioned under this Act to any State shall be expended therein until its legislature, or other State agency authorized by the State constitution to make laws governing the conservation of wildlife, shall have assented to the provision of this Act and shall have passed laws for the conservation of wildlife which shall include a prohibition against the diversion of license fees paid by hunters for any other purpose than the administration of said State fish and game department, except that, until the final adjournment of the first regular session of the legislature held after the passage of this Act, the assent of the Governor of the State shall be sufficient. The Secretary of the Interior and the State fish and game department of each State accepting the benefits of this Act shall agree upon the wildlife restoration projects to be aided in such State under the terms of this Act and all projects shall conform to the standards fixed by the Secretary of the Interior.

### DEFINITIONS

Sec. 2. For the purposes of this Act the term "wildlife-restoration project" shall be construed to mean and include the selection, restoration, rehabilitation, and improvement of areas of land or water adaptable as feeding, resting, or breeding places for wildlife, including acquisition by purchase, condemnation, lease, or gift of such areas or estates of interests therein as are suitable or capable of being made suitable therefor, and the construction thereon or therein of such works as may be necessary to make them available for such purposes and also including such research into problems of wildlife management as may be necessary to efficient administration affecting wildlife resources, and such preliminary or incidental costs and expenses as may be incurred in and about such projects; the term "State fish and game department" shall be construed to mean and include any department or division of department of another name, or commission, or official or officials, of a State empowered under its laws to exercise the functions ordinarily exercised by a State fish and game department.

#### APPROPRIATIONS: DISPOSITION OF EXPENDED FUNDS

Sec. 3. An amount equal to all revenues accruing each fiscal year (beginning with the fiscal year 1975) from any tax imposed on specified articles by sections 4161(b) and 4181 of the Internal Revenue Code of 1954 (26 U.S.C. 4161(b), 4181) shall, subject to the exemptions in section 4182 of such Code, be covered into the Federal Aid to wildlife restoration fund in the Treasury (hereinafter referred to as the "fund") and is authorized to be appropriated and made available until expended to carry out the purposes of this Act. So much of such appropriation apportioned to any State for any fiscal year as remains unexpended at the close thereof is authorized to be made available for expenditure in that State until the close of the succeeding fiscal year. Any amount apportioned to any State under the provisions of said Act which is unexpended or unobligated at the end of the period during which it is available for expenditure on any project is authorized to be made available for expenditure by the Secretary of the Interior in carrying out the provisions of the Migratory Bird Conservation Act.

#### APPORTIONMENT OF FUNDS: EXPENSES OF SECRETARY

Sec. 4. (a) So much, not to exceed 8 per centum, of the revenues covered into said fund in each fiscal year as the Secretary of the Interior may estimate to be necessary for his expenses in the administration and execution of this Act and the Migratory Bird Conservation Act shall be deducted for that purpose, and such sum is authorized to be made available therefor until the expiration of the next succeeding fiscal year, and within sixty days after the close of such fiscal year the Secretary of the Interior shall apportion such part thereof as remains unexpended by him, if any, and make certificate thereof to the Secretary of the Treasury and to the State fish and game departments on the same basis and in the same manner as is provided as to other amounts authorized by this Act to be apportioned among the States for such current fiscal year. The Secretary of the Interior, after making the aforesaid deduction, shall apportion, except as provided in subsection (b) of this section, the remainder of the revenue in said fund for each fiscal year among the several States in the following manner: One-half in the ratio which the area of each State bears to the total area of all the States, and one-half in the ratio which the number of paid hunting-license holders of each State in the second fiscal year preceding the fiscal year for which such apportionment is made, as certified to said Secretary by the State fish and game departments, bears to the total number of paid hunting license holders of all the States. Such apportionments shall be adjusted equitably so that no State shall receive less than one-half of 1 per centum nor more than 5 per centum of the total amount apportioned. The term fiscal year as used in this Act shall be a period of twelve consecutive months from July 1 through the succeeding June 30, except that the period for enumeration of paid hunting-license holders shall be a State's fiscal or license year.

(b) One-half of the revenues accruing to the fund under this Act each fiscal year (beginning with the fiscal year 1975) from any tax imposed on pistols, revolvers, bows, and arrows shall be apportioned among the States in proportion to the ratio that the population of each State bears to the population of all the States: Provided, That each State shall be apportioned not more than 3 per centum and not less than 1 per centum of such revenues and Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands shall each be apportioned one-sixth of 1 per centum of such revenues. For the purpose of this subsection, population shall be determined on the basis of the latest decennial census for which figures are available, as certified by the Secretary of Commerce.

(c) The amendments made by subsections (a) and (b) of this section shall take effect July 1, 1974.

CERTIFICATION TO STATES: ACCEPTANCE BY STATES:  
DISPOSITION OF FUNDS NOT ACCEPTED

Sec. 5. For each fiscal year, the Secretary of the Interior shall certify to the Secretary of the Treasury and to each State fish and game department the sum which he has estimated to be deducted for administering and executing this Act and the Migratory Bird Conservation Act and the sum which he has apportioned to each State. Any State desiring to avail itself of the benefits of this Act shall notify the Secretary of the Interior to this effect within sixty days after it has received the certification referred to in this section. The sum apportioned to any State which fails to notify the Secretary of the Interior as herein provided is authorized to be made available for expenditure by the Secretary of the Interior in carrying out the provisions of the Migratory Bird Conservation Act.

SUBMISSION AND APPROVAL OF PLANS AND PROJECTS: SETTING FUNDS ASIDE:  
LIMITATION ON ADMINISTRATIVE COSTS

Sec. 6. (a) Any State desiring to avail itself of the benefits of this Act shall, by its State fish and game department, submit programs or projects for wildlife restoration in either of the following two ways:

(1) The State shall prepare and submit to the Secretary of the Interior a comprehensive fish and wildlife resource management plan which shall insure the perpetuation of these resources for the economic, scientific, and recreational enrichment of the people. Such plan shall be for a period of not less than five years and be based on projections of desires and needs of the people for a period not less than fifteen years. It shall include provisions for updating at intervals of not more than three years and be provided in a format as may be required by

the Secretary of the Interior. If the Secretary of the Interior finds that such plans conform to standards established by him and approves such plans, he may finance up to 75 per centum of the cost of implementing segments of those plans meeting the purposes of this Act from funds apportioned under this Act upon his approval of an annual agreement submitted to him.

(2) A State may elect to avail itself of the benefits of this Act by its State fish and game department submitting to the Secretary of the Interior full and detailed statements of any wildlife-restoration project proposed for that State. If the Secretary of the Interior finds that such project meets with the standards set by him and approves said project, the State fish and game department shall furnish to him such surveys, plans, specifications, and estimates therefor as he may require. If the Secretary of the Interior approves the plans, specifications, and estimates for the project, he shall notify the State fish and game department and immediately set aside so much of said fund as represents the share of the United States payable under this Act on account of such project, which sum so set aside shall not exceed 75 per centum of the total estimated cost thereof.

The Secretary of the Interior shall approve only such comprehensive plans or projects as may be substantial in character and design and the expenditure of funds hereby authorized shall be applied only to such approved comprehensive wildlife plans or projects and if otherwise applied they shall be replaced by the State before it may participate in any further apportionment under this Act. No payment of any money apportioned under this Act shall be made on any comprehensive wildlife plan or project until an agreement to participate therein shall have been submitted to and approved by the Secretary of the Interior.

(b) If the State elects to avail itself of the benefits of this Act by preparing a comprehensive fish and wildlife plan under option (1) of subsection (a) of this section, then the term "project" may be defined for the purposes of this Act as a wildlife program, all other definitions notwithstanding.

(c) Administrative costs in the form of overhead or indirect costs for services provided by State central service activities outside of the State agency having primary jurisdiction over the wildlife resources of the State which may be charged against programs or projects supported by the fund established by section 3 of this Act shall not exceed in any one fiscal year 3 per centum of the annual apportionment to the State.



## PAYMENT OF FUNDS TO STATES

Sec. 7 (a) When the Secretary of the Interior shall find that any project approved by him has been conducted or, if involving research relating to wildlife, is being conducted in compliance with said plans and specifications, he shall cause to be paid to the proper authority of said State the amount set aside for said project. The Secretary of the Interior may, at his discretion, from time to time, make payments on said project as the same progresses; but these payments, including previous payments, if any, shall not be more than the United States pro rata share of the project in conformity with said plans and specifications. If a State has elected to avail itself of the benefits of this Act by preparing a comprehensive fish and wildlife plan as provided for under option (1) of subsection (a) of section 6 of this Act, and this plan has been approved by the Secretary of the Interior, then the Secretary may, at his discretion, and under such rules and regulations as he may prescribe, advance funds to the State for financing the United States pro rata share agreed upon between the State fish and game department and the Secretary.

(b) Any construction work and labor in each State shall be performed in accordance with its laws and under the direct supervision of the State fish and game department, subject to the inspection and approval of the Secretary of the Interior and in accordance with rules and regulations made pursuant to this Act. The Secretary of the Interior and the State fish and game department of each State may jointly determine at what times and in what amounts payments shall be made under this Act. Such payments shall be made by the Secretary of the Treasury, on warrants drawn by the Secretary of the Interior against the said fund to such official or officials, or depository, as may be designated by the State fish and game department and authorized under the laws of the State to receive public funds of the State.

## MAINTENANCE OF PROJECTS: MANAGEMENT ACTIVITIES: HUNTER SAFETY PROGRAM

Sec. 8 (a) Maintenance of wildlife-restoration projects established under the provisions of this Act shall be the duty of the States in accordance with their respective laws. Beginning July 1, 1945, the term "wildlife-restoration project," as defined in section 2 of this Act, shall include maintenance of completed projects. Notwithstanding any other provisions of this Act, funds apportioned to a State under this Act may be expended by the State for management (exclusive of law enforcement and public relations) of wildlife areas and resources.

(b) Each State may use the funds apportioned to it under Section 4b of this Act to pay up to 75 per centum of the costs of a hunter safety program and the construction, operation, and maintenance of public target ranges, as a part of such program. The non-Federal share of such costs may be derived from license fees paid by hunters, but not from other Federal grant programs. The Secretary shall issue, not later than the 120th day after the effective date of this subsection, such regulations as he deems advisable relative to the criteria for the establishment of hunter safety programs and public target ranges under this subsection.

PAYMENT OF FUNDS TO AND COOPERATION WITH PUERTO RICO, GUAM,  
AMERICAN SAMOA, THE COMMONWEALTH OF THE NORTHERN MARIANA  
ISLANDS, AND THE VIRGIN ISLANDS

Sec. 8A. The Secretary of the Interior is authorized to cooperate with the Secretary of Agriculture of Puerto Rico, the Governor of Guam, the Governor of American Samoa, the Governor of the Commonwealth of the Northern Mariana Islands, and the Governor of the Virgin Islands, in the conduct of wildlife-restoration projects, as defined in section 2 of this Act, and hunter safety programs as provided by section 8(b) of this Act, upon such terms and conditions as he shall deem fair, just, and equitable, and is authorized to apportion to Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands, out of the money available for apportionment under this Act, such sums as he shall determine, not exceeding for Puerto Rico one-half of 1 per centum, for Guam one-sixth of 1 per centum, for American Samoa one-sixth of 1 per centum, for the Commonwealth of the Northern Mariana Islands one-sixth of 1 per centum, and for the Virgin Islands one-sixth of 1 per centum of the total amount apportioned, in any one year, but the Secretary shall in no event require any of said cooperating agencies to pay an amount which will exceed 25 per centum of the cost of any project. Any unexpended or unobligated balance of any apportionment made pursuant to this section shall be available for expenditure in Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands, as the case may be, in the succeeding year, on any approved project, and if unexpended or unobligated at the end of such year is authorized to be made available for expenditure by the Secretary of the Interior in carrying out the provisions of the Migratory Bird Conservation Act.

EMPLOYMENT OF PERSONNEL

Sec. 9. Out of the deductions set aside for administering and executing this Act and the Migratory Bird Conservation Act, the Secretary of the Interior is authorized to employ such assistants, clerks, and other persons in the City of Washington and elsewhere, to be taken from eligible lists of the Civil Service; to rent or construct buildings outside of the City of Washington; to purchase such supplies, materials, equipment, office fixtures, and apparatus; and to incur such travel and other expenses, including purchase, maintenance, and hire of passenger-carrying motor vehicles, as he may deem necessary for carrying out the purposes of this Act.

## RULES AND REGULATIONS

Sec. 10. The Secretary of the Interior is authorized to make rules and regulations for carrying out the provisions of this Act.

### APPROPRIATIONS - "PERMANENT-INDEFINITE" APPROPRIATIONS TO FEDERAL AID IN WILDLIFE RESTORATION

The following provision is contained in Chapter VII (Interior Department Appropriation Act, 1951) of the General 595, Appropriations Act, 1951; (64 Stat. 693), Sept. 6, 1950.

"For carrying out the provisions of the Act of September 2, 1937, as amended (16 U.S.C. 669-669j), amounts equal to the sums credited during the next preceding fiscal year and each fiscal year thereafter to the special fund created by said Act."



## APPENDIX 8



**Montana Department  
of  
Fish, Wildlife & Parks**



Helena, MT 59620  
December 10, 1991

**MEMORANDUM**

**TO:** Don Hyyppa  
**FROM:** Bobbi Balaz *BB*  
**SUBJECT:** Federal Aid Information re SB 313 Study

This memo and attachments contain information requested in your November 1, 1991, memo regarding SB 313--Recreational User Fee Study.

**III. A. Federal Aid Implications of Requiring a Water Development Stamp**

The Federal Aid in Sport Fish and Wildlife Restoration Acts and the Federal Aid program rules implementing the laws would prohibit requiring hunters and anglers to purchase a water development stamp when buying a state hunting, fishing, or waterfowl (hunting) license. In order to purchase hunting and fishing licenses, states may not require persons to buy other licenses, permits, or stamps such as for water development.

Likewise, the rules would prohibit including, as part of the total cost of a license, an earmarked fee designated for water development projects (unless they were for the sole purpose of benefiting the sport fish restoration program). This may only be done in cases such as the river restoration portion of our fishing license, where the entire benefit of the fee is toward the agency's sport fish management program.

Federal laws and rules prohibit "diversion" of hunting and fishing license funds for any purpose other than the administration of the fish and wildlife agency. Furthermore, control over the license funds must be maintained by the fish and wildlife agency director. See highlighted portions of the attached federal laws and rules. The issues of use of license revenues and prohibition against

diversion have been also addressed by the Montana State Legislature at Sections 87-1-601, 87-1-701, and 87-1-708, MCA.

Requiring hunters and anglers to purchase a water development stamp would likely cause problems for our agency. The U.S. Fish and Wildlife Service (USFWS) is likely to determine that a diversion of license funds would occur as a result of this. The penalty for diversion of state license funds is that our agency could lose nearly \$9 million annually in Federal Aid in Sport Fish and Wildlife Restoration program funds.

Current Federal Aid requirements do not address state boat registration or other fees. However, there has been some recent discussion regarding a possible future amendment of the Sport Fish Restoration Act to subject state boating revenues to the same restrictions and requirements as state fishing license revenues.

### III. B. Numbers and Prices of Hunting and Fishing Licenses Sold

There are several ways to look at this question. One method may be more appropriate for your purpose than the other. As long as you do not combine information from the two, either would be acceptable.

- a. For license year 1989 (March 1, 1989, through February 28, 1990), there were 255,333 paid hunting license holders and 375,222 paid fishing license holders. (See attached information.)
- b. For license year 1990 (March 1, 1990, through February 28, 1991), total license revenues were \$19.5 million. The various prices of the license and numbers sold are indicated. (See attached information.) The numbers of licenses sold would be higher than the number of persons to whom licenses were sold, because the same person sometimes purchases more than one license.

### VI. A. Dingell-Johnson (Federal Aid in Sport Fish Restoration Account) Information

#### 1. D-J Apportionments

The Department was apportioned \$4,506,996 in Federal Aid in Sport Fish Restoration Program funds for FFY 91, and \$4.2 million for FFY 90. [Note: The program is often referred to as Dingell-Johnson (D-J). It is also sometimes referred to as Wallop-Breaux, because a large portion of the total Sport Fish Restoration funds are directly attributable to new sources of revenues added to the fund since 1984 as a result of the Wallop-Breaux Amendment to the Sport Fish Restoration Act. For the purpose of this analysis and almost any other



analysis, it is more accurate to refer to the funding as Sport Fish Restoration or Dingell-Johnson, rather than Wallop-Breaux.]

2. Allocation of D-J Funding

The Legislature has authorized the agency to spend D-J funds for both operations and capital construction projects. Attached is information that provides an overview of how D-J funds were utilized by the agency in 1991. The dollars match the \$4.2 million noted above for FFY 90. Project costs do not include required state matching funds. (For every three dollars in federal funds spent, at least one matching state dollar must also be spent.)

Please let me know if you intend to distribute this information externally. Perhaps I can refine it or make a few changes to better adapt it to your needs.

3. Eligible Uses of D-J Funding

Sections of the Federal Aid Program Rules that address eligible and ineligible uses of D-J funds are highlighted. Following are several examples of the types of projects that can be funded in a manner that meets Federal Aid requirements of benefitting the sport fish restoration program, while potentially assisting in the water development effort.

Over the past several years, the department has been using D-J funds for several dam-related sport fish restoration projects approved by the 1989 Legislature. USFWS approval was received for a Bearpaw Dam Engineering Study (\$75,000 D-J and \$25,000 state license funds), and for the Cherry Creek Dam Feasibility Study (\$50,000 D-J and \$50,000 license funds). The 1989 Legislature also approved our request to repair or remove the Clearwater Fish Barrier (\$75,000 D-J and \$25,000 license), but this has not yet been submitted to the USFWS for approval.

In Utah, the department has used D-J funding to acquire conservation pools. By maintaining specified water levels or acre-feet in reservoirs, water needed for fisheries management purposes is guaranteed. One method is to buy water, through a conservation pool, outright. This involves a contract with an irrigation company, which could not draw water down below a certain level or the fish and wildlife agency would "lose control" of the federally-funded project benefits and a diversion of funds would result. This involves a perpetual acquisition of the conservation pool, although it would be possible to negotiate for specified long-term time period.

Utah also has undertaken dam renovation projects, where dam levels are raised or dams are repaired for irrigation companies. Federal funds are used to repair or increase the height of the dams in exchange for specified acre-feet of

water (conservation pools) to remain in the reservoir. Values are assigned, in terms of the cost to renovate compared to the value of the water to the fisheries resource.

From these examples it is clear that the agency may determine it is important for its sport fish restoration program to expend Federal Aid funds for certain types of dam-related projects. However, as noted earlier, all of our Federal Aid funding would potentially be jeopardized by requiring the purchase of a water development stamp by hunters or anglers.

If you have any questions or need further information, please let me know and I'd be happy to furnish it to you.

Enclosures

cc: Mott

sb313.don

## APPENDIX 9



department, then the use of this money must be limited in the manner, method, and amount to those uses that do not result in a violation.

(6) Money received from the collection of license drawing applications is not subject to the deposit requirements of 17-6-105. The department shall deposit license drawing application money within a reasonable time after receipt.

87-1-601. (Effective March 1, 1992) Use of fish and game money. (1)

(a) Except as provided in subsection (7), all money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, or from damages collected for violations of the fish and game laws of this state, from appropriations, or received by the department from any other state source must be turned over to the state treasurer and placed by him in the state special revenue fund to the credit of the department.

(b) Any money received from federal sources must be deposited in the federal special revenue fund to the credit of the department.

(c) All interest earned on money from the following sources must be placed in the state special revenue fund to the credit of the department:

(i) the general license account;

(ii) the license drawing account;

(iii) accounts established to administer the provisions of 87-1-246, 87-1-258, 87-1-605, 87-2-412, 87-2-722, and 87-2-724; and

(iv) money received from the sale of any other hunting and fishing license.

(2) That money must be exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses, and expenditures authorized to be made by the department under the terms of this title. That money must be spent for those purposes by the department, subject to appropriation by the legislature.

(3) Any reference to the fish and game fund in this code means fish and game money in the state special revenue fund and the federal special revenue fund.

(4) Except as provided in subsection (7), all money collected or received from fines and forfeited bonds, except money collected or received by a justice's court, relating to violations of state fish and game laws under Title 87 must be deposited by the state treasurer and credited to the department in a state special revenue fund account for this purpose. Out of any fine imposed by a court for the violation of the fish and game laws, the costs of prosecution must be paid to the county where the trial was held in any case in which the fine is not imposed in addition to the costs of prosecution.

(5) Money received by the department from the sale of surplus real property; exploration or development of oil, gas, or mineral deposits from lands acquired by the department except royalties or other compensation based on production; and from leases of interests in department real property not contemplated at the time of acquisition must be deposited in an account within the nonexpendable trust fund of the state treasury. The interest derived from the fund, but not the principal, may be used only for the purpose of operation, development, and maintenance of real property of the department, and only upon appropriation by the legislature. If the use of money as set forth in this section would result in violation of applicable federal laws or

state statutes specifically naming the department or money received by the department, then the use of this money must be limited in the manner, method, and amount to those uses that do not result in a violation.

(6) Money received from the collection of license drawing applications is not subject to the deposit requirements of 17-6-105. The department shall deposit license drawing application money within a reasonable time after receipt.

(7) Money collected or received from fines or forfeited bonds for the violation of 77-1-801, 77-1-806, or rules adopted under 77-1-804 must be deposited as follows:

(a) 50% in an account for use by the department for the enforcement of 77-1-801, 77-1-806, and rules adopted under 77-1-804; and

(b) 50% in the state lands recreational use account established by 77-1-808 for use by the department of state lands in the management of state lands.

History: En. Sec. 21, Ch. 193, L. 1921; re-en. Sec. 3670, R.C.M. 1921; amd. Sec. 32, Ch. 59, L. 1927; amd. Sec. 1, Ch. 53, L. 1933; amd. Sec. 2, Ch. 114, L. 1945; amd. Sec. 159, Ch. 147, L. 1963; amd. Sec. 17, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-121; amd. Sec. 2, Ch. 640, L. 1978; amd. Sec. 1, Ch. 388, L. 1981; amd. Sec. 45, Ch. 231, L. 1983; amd. Sec. 82, Ch. 557, L. 1987; amd. Sec. 1, Ch. 41, L. 1991; amd. Sec. 3, Ch. 339, L. 1991; amd. Sec. 10, Ch. 609, L. 1991.

#### Compiler's Comments

1991 Amendments: Chapter 41 inserted (1)(c) regarding disposition of interest earned on certain accounts; and made minor changes in style. Amendment effective January 1, 1992.

Chapter 339 inserted (6) excepting money received from license drawing applications from requirements of 17-6-105; and made minor changes in style. Amendment effective April 4, 1991.

Chapter 609 at beginning of (1) and (4) inserted exception clause; in (4), near end of first sentence after "department", deleted "of fish, wildlife, and parks"; and inserted (7)

regarding allocation of fines or forfeited bonds collected for violations of 77-1-801, 77-1-806, or rules adopted under 77-1-804. Amendment effective March 1, 1992.

Applicability: Section 22, Ch. 609, L. 1991, provided: "On passage and approval of (this act), the board of land commissioners shall commence proceedings to adopt rules to be effective March 1, 1992. The department of state lands and the department of fish, wildlife, and parks shall commence proceedings and arrangements necessary to establish a recreational use license to be effective March 1, 1992." Approved April 24, 1991.

**87-1-602. Payment of salaries, per diem, and expenses.** All salaries, per diem, expenses, and claims incurred by the department or a person appointed or employed by it shall be paid out of fish and game moneys in the general fund, the federal special revenue fund, the state special revenue fund, or other applicable fund upon warrants properly drawn on those funds.

History: En. Sec. 23, Ch. 193, L. 1921; re-en. Sec. 3672, R.C.M. 1921; re-en. Sec. 3672, R.C.M. 1935; amd. Sec. 17, Ch. 97, L. 1961; amd. Sec. 18, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-123; amd. Sec. 1, Ch. 48, L. 1978; amd. Sec. 48, Ch. 281, L. 1983.

**87-1-603. Payments to counties for department-owned land — exceptions.** Before November 30 of each year, the treasurer of each county in which the department owns any land shall describe the land, state the number of acres in each parcel, and request the drawing of a warrant to the county in a sum equal to the amount of taxes which would be payable on county assessment of the property were it taxable to a private citizen. The director shall approve or disapprove the request. The director may disapprove

a request only if he finds it to be in the public interest. If the director disapproves a request, he shall state the reasons for the disapproval to the county. If the director approves a request, he shall draw a warrant for the amount of the request and shall send the warrant to the county, payable out of any funds to the county for parks. No payment may be made for less than 100 acres. No payment may be made by the department for game or other lands acquired and managed for the department.  
History: En. Sec. 1, Ch. 1, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; amd. Sec. 1, Ch. 486, L. 1987.

**87-1-604. Authorization of funds.** The county commissioners under 87-1-603 may allocate, in sum, funds to any school district in any department lands. Any funds made to school districts shall be used for the purposes of the act.  
History: En. Sec. 2, Ch. 1, L. 1973.

**87-1-605. Fees used for maintenance of fishing access.** The amount of funds used for the maintenance of fishing access shall not exceed 25 percent of the funds raised from fishing licenses. The funds raised from fishing licenses or sources of funds used for fishing accesses, stream, river, or lake accesses, shall be used to provide recreational facilities. The moneys used for operation and maintenance of these facilities shall be used only for these purposes on land owned by the department.  
History: En. Sec. 3, Ch. 406, L. 1973; amd. Sec. 1, Ch. 461, L. 1981; amd. Sec. 1, Ch. 461, L. 1981.

**87-1-606. Fee limitation.** The fee for more than one license under 87-1-605 shall be assessed for initial fees. The fee for a person may not exceed the fee for a person.  
History: En. Sec. 49, Ch. 5, L. 1973.

**87-1-607 through 87-1-609.**

**87-1-610. (Temporary) rights — general spend**

## APPENDIX 10





be expended or retained according to the written agreement, contract, authorization, or terms of the gift, donation, grant, legacy, bequest, or devise committing money to the fish and wildlife mitigation trust fund.

History: En. Sec. 4, Ch. 445, L. 1987.

**87-1-615. Investment of fish and wildlife mitigation trust fund.** The fish and wildlife mitigation trust fund must be invested and managed by the board of investments as part of the unified investment program in a separate investment fund.

History: En. Sec. 5, Ch. 445, L. 1987.

## Part 7

### State-Federal Relationships

**87-1-701. Assent to Dingell-Johnson bill.** The congress of the United States having passed an act which was approved on August 9, 1950, and which is known as Public Law 681-81st Congress, Chapter 658-Second Session, wherein it is, among other things, provided that "no money apportioned under this act to any state, except as hereinafter provided, shall be expended therein until its legislature, or other state agency authorized by the state constitution to make laws governing the conservation of fish, shall have assented to the provisions of this act and shall have passed laws for the conservation of fish, which shall include prohibition against the diversion of license fees paid by fishermen for any other purpose than the administration of said fish, wildlife, and parks department, except that, until the final adjournment of the first regular session of the legislature held after passage of this act, the assent of the governor of the state shall be sufficient", and since the moneys referred to in the act of congress are collected in part from the fishermen of this state and will not be returned to the state of Montana except the state of Montana does assent to this act; now, therefore, the state of Montana does assent to the provisions of said act of congress which is commonly known as the Dingell-Johnson bill, but such assent is with the express reservations enumerated in 87-1-701 through 87-1-703. The state of Montana does not, by the passage of 87-1-701 through 87-1-703 or by the consent herein given, surrender to the congress of the United States or any department of the government of the United States any of those rights which are retained by the people of the state of Montana or the state of Montana and which are guaranteed to them by the 9th and 10th amendments to the constitution of the United States, nor shall 87-1-701 through 87-1-703 in any manner or at all be construed or held to be the state of Montana's consent to amending the constitution of the United States in any manner or at all relative to its rights. The title to all lands acquired under the provisions of 87-1-701 through 87-1-703 for fish restoration and management projects and projects constructed thereon shall be and remain in the state



## APPENDIX 11





Acquisition of Areas of Land for the Adequate Protection or the Establishment of and for Other Purposes". Complete jurisdiction and with the administration, United States under the

61.

Authority of department passed an act which was as 50 Federal Statutes for things, provided that state shall be expended authorized by the state on of wildlife shall have have passed laws for the position against the diverse than the administration referred to in the act of his state and will not be Montana does assent to sent to the provisions of Pittman-Robertson bill, enumerated in this section, t by the passage of these e congress of the United nited States any of those of Montana or the state e 9th and 10th amend- ll this section, 87-1-709, r held to be the state of e United States in any ver, that nothing herein e or acquisition of lands officers for establishing Conservation Act of the nds acquired under the or wildlife projects and e state of Montana. m such acts as may be e projects as defined and oject initiated under the ll be under the super alations shall be passi ng animals or the taking ot they be in conformi ated by the department

The title to all lands acquired or projects created from lands purchased or acquired by deed or gift shall vest in, be, and remain in the state of Montana and shall be operated and maintained by it in accordance with the laws of the state of Montana. The department shall have no power to accept benefits unless the projects created or established shall wholly and permanently belong to the state of Montana, except as provided in 87-1-709. Nothing contained herein shall prevent the department from entering into cooperative agreements on federally owned lands as provided for herein.

History: (1)En. Sec. 1, Ch. 167, L. 1941; Sec. 26-1122, R.C.M. 1947; (2)En. Sec. 2, Ch. 167, L. 1941; amd. Sec. 1, Ch. 80, L. 1951; amd. Sec. 13, Ch. 417, L. 1977; Sec. 26-1123, R.C.M. 1947; R.C.M. 1947, 26-1122, 26-1123.

#### 87-1-709. Cooperation with United States for wildlife restoration.

The department, in the name of the state and with the approval of the governor, shall have the power to enter into the cooperative agreements on federally owned lands with the government of the United States or some department or bureau thereof or with an individual or individuals, private corporations, or partnerships for the purpose of carrying on any wildlife restoration project and established under the provisions of said Pittman-Robertson Act of the congress of the United States and shall have the power to acquire by purchase, either for cash or upon installments, or lease or by gift or devise, either individually or in conjunction with the government of the United States or some department or bureau thereof, such lands or other property or interests therein as may be necessary for the purpose of carrying on any wildlife restoration project created and established under the provisions of said Pittman-Robertson Act of the congress of the United States. The state of Montana does reserve to itself, acting through its legislature, the right to direct the department to abandon any wildlife restoration projects created and established as the state of Montana may in its judgment think proper, provided the department shall have no power to exercise the right of eminent domain to condemn or acquire property under 87-1-708 through 87-1-710.

History: En. Sec. 3, Ch. 167, L. 1941; amd. Sec. 2, Ch. 80, L. 1951; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-1124.

87-1-710. Use of hunters' license fees for department purposes only. In accordance with the other requirement of said act of congress, it shall be the law of this state, so long as this assent shall be unrepealed, that no license fees paid by hunters in the state of Montana shall be used or taken for any other purpose than the administration and use of the department.

History: En. Sec. 4, Ch. 167, L. 1941; R.C.M. 1947, 26-1125.

87-1-711. Acquisition of land by United States for bison and other big game animals. Consent of the state of Montana is given to the acquisition by the United States by purchase, gift, devise, or lease of such areas of land or water or of land and water in section 31, township 18 north, range 20 west, Lake County, Montana, and section 36, township 18 north, range 21 west, Sanders County, Montana, excepting the Northern Pacific railway and state of Montana lands within said sections, as the United States may deem necessary for the establishment of an exhibition park for bison and other big

## APPENDIX 12





## Part 3 — Footpaths and Bicycle Trails

- 60-3-301. Short title.  
 60-3-302. Bicycle trail defined.  
 60-3-303. Footpaths and bicycle trails to be established — funding.  
 60-3-304. Duties of department of transportation.

## Chapter Cross-References

- Highway revenue nondiversion, Art. VIII, sec. 6, Mont. Const.  
 Coal severance tax revenues — allocation to highway reconstruction trust fund account, 15-35-108.  
 Public contractor's fees and tax, Title 15, ch. 50.  
 Gasoline and vehicle fuels taxes, Title 15, ch. 70.  
 License tax on vehicles propelled by liquified petroleum gas, Title 15, ch. 71.
- Deposit of gas and oil royalties from federal government in highway account, 17-3-201.  
 Budgeting and appropriations, Title 17, ch. 7.  
 Special property tax applications — custom combines, 61-10-130.  
 Acceptance of gift of lands to state, 77-1-213.  
 Coal Board grants for certain highway construction, repair, and maintenance, 90-6-205.  
 Coal area highway reconstruction program, 90-6-210.

## Part 1

## Federal-Aid Funds

## Part Cross-References

- Authority to contract for road work when federal funds involved, 7-14-4108.

60-3-101. Assent to federal law. (1) The legislature, for and on behalf of the state, assents to the provisions of Title 23, U.S.C.

(2) The department may, for and on behalf of the state, enter into all contracts and agreements with the United States or any officer, department, or bureau thereof relating to the construction, reconstruction, repair, and maintenance of highways in the state.

(3) The department may make all rules necessary to comply with the provisions of the laws assented to and all other laws granting aid for public highways and to obtain for the state the full benefits of such laws.

(4) The department may do all other things necessary or required to carry out fully the cooperation contemplated by the acts of congress assented to.

History: En. Sec. 4-101, Ch. 197, L. 1965; amd. Sec. 71, Ch. 316, L. 1974; R.C.M. 1947, 32-2401; amd. Sec. 7, Ch. 23, L. 1979.

## Cross-References

- Adoption and publication of rules, Title 2, ch. 4, part 3.

60-3-102. Purposes. The purposes of 60-3-102 through 60-3-105 are to:

- (1) promote the safety, convenience, and enjoyment of travel on and protection of the public investment in the highways of this state;

- (2) restore, preserve, and improve the highway and of and adjacent to the highway;  
 (3) entitle the state to receive the United States under Title 23, U.S.C.  
 History: En. Sec. 1, Ch. 228, 32-2422.

## Cross-References

- Glacier National Park, 2-1-205.

60-3-103. Purposes for which the department may expend funds for the following purposes:

(1) landscape and roads on federal-aid highways of this state;

(2) acquisition of interests in land for the restoration, preservation, and improvement to the highways; and

(3) acquisition and development of recreation areas and sanitary facilities on federal-aid highway rights-of-way for the traveling public.

History: En. Sec. 2, Ch. 228, 32-2423; amd. Sec. 8, Ch. 23, L. 1979.

## Cross-References

- Purposes for which property may be acquired, 60-4-103.

60-3-104. Extent of interest in land. The fee simple or any lesser interest in land is reasonably necessary to the highway.

60-3-105. Acquisition may be made.

History: En. Sec. 3, Ch. 228, 32-2424.

## Cross-References

- Acquisition and disposition of land, Title 60, ch. 4, part 1.

60-3-105. Expenditures for nonmatching funds authorized by authority granted by 60-3-105.

History: En. Sec. 4, Ch. 228, 32-2425; amd. Sec. 9, Ch. 23, L. 1979.

Section 126  
 DIVERSION

DISTRIBUTION AND APPORTIONMENT  
OF HIGHWAY FUNDS

60-3-105

- (2) restore, preserve, and enhance scenic beauty within the right-of-way of and adjacent to the highways;
  - (3) entitle the state to receive and expend the 3% nonmatching funds from the United States under Title 23, United States Code.
- History: En. Sec. 1, Ch. 286, L. 1967; amd. Sec. 87, Ch. 316, L. 1974; R.C.M. 1947, 32-2422.

Cross-References

Glacier National Park, 2-1-205.

Cession and retrocession of jurisdiction over Blackfeet highway, 2-1-206.  
 Yellowstone National Park, 2-1-207.  
 State parks — connecting roads, 23-1-104.

**60-3-103. Purposes for which federal funds to be expended.** The department may expend funds apportioned to the state under 23 U.S.C. 319 for the following purposes:

- (1) landscape and roadside development within the rights-of-way of federal-aid highways of this state;
- (2) acquisition of interests in and improvement of strips of land necessary for the restoration, preservation, and enhancement of scenic beauty adjacent to the highways; and
- (3) acquisition and development of publicly owned and controlled rest and recreation areas and sanitary and other facilities within or adjacent to federal-aid highway rights-of-way reasonably necessary to accommodate the traveling public.

History: En. Sec. 2, Ch. 286, L. 1967; amd. Sec. 88, Ch. 316, L. 1974; R.C.M. 1947, 32-2423; amd. Sec. 8, Ch. 23, L. 1979.

Cross-References

Purposes for which property acquired, 60-4-103.

Informational signs — federal requirements — conflict and accord, 60-5-527.  
 Outdoor advertising — policy, 75-15-102.  
 Junkyard regulation — agreements with the United States, 75-15-204.

**60-3-104. Extent of interest acquired.** The department may acquire the fee simple or any lesser estate or interest as determined by it to be reasonably necessary to accomplish the purposes of 60-3-102 through 60-3-105. Acquisition may be made by gift, purchase, or exchange.  
 History: En. Sec. 3, Ch. 286, L. 1967; amd. Sec. 89, Ch. 316, L. 1974; R.C.M. 1947, 32-2424.

Cross-References

Acquisition and disposition of property, Title 60, ch. 4, part 1.

**60-3-105. Expenditure of funds.** The department shall expend only nonmatching funds authorized under 23 U.S.C. 319(b) in carrying out the authority granted by 60-3-102 through 60-3-104.

History: En. Sec. 4, Ch. 286, L. 1967; amd. Sec. 90, Ch. 316, L. 1974; R.C.M. 1947, 32-2425; amd. Sec. 9, Ch. 23, L. 1979.

ugh 60-3-105 are to:  
nt of travel on and  
is state;

## APPENDIX 13



see the 1983 Amendments notes] of this section shall apply to natural disasters or catastrophic failures which the Secretary finds eligible for emergency relief subsequent to the date of enactment of this section [enacted Jan. 6, 1983]."

#### CODE OF FEDERAL REGULATIONS

Emergency relief program, 23 CFR Part 668.

#### CROSS REFERENCES

This section is referred to in 23 USCS § 120.

#### § 126. Diversion

(a) Since it is unfair and unjust to tax motor-vehicle transportation unless the proceeds of such taxation are applied to the construction, improvement, or maintenance of highways, after June 30, 1935, Federal aid for highway construction shall be extended only to those States that use at least the amounts provided by law on June 18, 1934, for such purposes in each State from State motor vehicle registration fees, licenses, gasoline taxes, and other special taxes on motor-vehicle owners and operators of all kinds for the construction, improvement, and maintenance of highways and administrative expenses in connection therewith, including the retirement of bonds for the payment of which such revenues have been pledged, and for no other purposes, under such regulations as the Secretary of Transportation shall promulgate from time to time.

(b) In no case shall the provisions of this section operate to deprive any State of more than one-third of the entire apportionment authorized under this chapter [23 USCS §§ 101 et seq.] to which that State would be entitled in any fiscal year. The amount of any reduction in a State's apportionment shall be reapportioned in the same manner as any other unexpended balance at the end of the period during which it otherwise would be available in accordance with section 104(b) of this title [23 USCS § 104(b)]. (Aug. 27, 1958, P. L. 85-767, § 1, 72 Stat. 901; Aug. 13, 1973, P. L. 93-87, Title I, § 152(3), 87 Stat. 276.)

#### HISTORY; ANCILLARY LAWS AND DIRECTIVES

##### Amendments:

1973. Act Aug. 13, 1973, in subsec. (a), substituted "Transportation" for "Commerce".

#### RESEARCH GUIDE

##### Am Jur:

71 Am Jur 2d, State and Local Taxation § 616.

## INTERPRETIVE NOTES AND DECISIONS

Predecessor to 23 USCS § 126 was intended to prevent states seeking federal aid for highway construction from diverting taxes on gasoline and motor vehicles to uses other than construction, improvement, and maintenance of highways and retirement of highway bonds. 39 Ops Atty Gen No. 157.

State which diverted part of highway taxes to other uses after June 30, 1935 was subject to reduction in its allocation from funds provided for federal aid for highway construction notwithstanding state still expended for purposes named in predecessor to 23 USCS § 126 same amount that it expended prior to June 18, 1934. 39 Ops Atty Gen No. 157.

Bonds eligible for redemption out of one fourth of the revenues derived from gasoline taxes, under state law as it existed when Act of June 18, 1934, was passed are not "bonds for the payment of which such revenues are pledged;" it follows that this portion of the revenues had

already been diverted to uses other than those mentioned in the federal act when that act was passed, and no additional diversion will result if other bonds similarly affected are now made eligible for payment therefrom. 39 Ops Atty Gen 269.

The word "pledged" contemplates a definite pledge which enters into the contract with purchasers of bonds and is to be distinguished from a mere setting aside of revenues subsequent to the issuance of the bonds. 39 Ops Atty Gen 269.

State law, creating motor vehicle highway account, does not establish contract, which is impaired by state motor vehicle weight tax act. Department of Treasury v Foster (1939) 215 Ind 217, 18 NE2d 783.

State cannot impose tax on gasoline used in stationary engines to furnish power for machinery used to process gravel for road construction and maintenance. Hallett Const. Co. v Spaeth (1942) 212 Minn 531, 4 NW2d 337.

## § 127. Vehicle weight limitations—Interstate System

(a) No funds authorized to be appropriated for any fiscal year under provisions of the Federal-Aid Highway Act of 1956 shall be apportioned to any State which does not permit the use of the National System of Interstate and Defense Highways within its boundaries by vehicles with a weight of twenty thousand pounds carried on any one axle, including enforcement tolerances, or with a tandem axle weight of thirty-four thousand pounds, including enforcement tolerances, or a gross weight of at least eighty thousand pounds for vehicle combinations of five axles or more. However, the maximum gross weight to be allowed by any State for vehicles using the National System of Interstate and Defense Highways shall be twenty thousand pounds carried on one axle, including enforcement tolerances, and a tandem axle weight of thirty-four thousand pounds, including enforcement tolerances and with an overall maximum gross weight, including enforcement tolerances, on a group of two or more consecutive axles produced by application of the following formula:

$$W = 500 \left( \frac{LN}{N-1} + 12N + 36 \right)$$

where W equals overall gross weight on any group of two or more consecutive axles to the nearest five hundred pounds, L equals distance in feet between the extreme of any group of two or more consecutive axles, and N equals number of axles in group under consideration, except that two consecutive sets of tandem axles may carry a gross load of thirty-four thousand pounds each providing the overall distance between the first and last axles of such consecutive sets of tandem axles is thirty-six feet or more:

Provided, 7  
pounds, inc  
loads which  
issued spec  
correspondi  
highways o  
ate State a  
overall gros  
date of en  
[enacted Ja  
withheld fr  
provisions s  
tionment to  
vehicles or  
lawfully op  
the overall  
the date of  
[enacted Ja  
regulations  
purposes of  
respect to t  
1982, shall

(b) No Stat  
motor vehic  
the Intersta  
repairs, and  
(Aug. 27, 19  
§ 17(e), 74  
5, 1976, P.  
424, Title I,

Referen  
"The F  
June 29  
consult

Explana  
The su  
inasmuch  
which s  
with no

Amend.  
1960. A  
respect

## APPENDIX 14





## Part 2

## State Funds

## Part Cross-References

Allocation of state funds for public transportation, 7-14-102.

Payment of cost of weed control program, 7-22-2144.

Disposal of coal severance taxes — coal area highway improvement, 15-35-108.

Coal Board grants for certain highway construction, repair, and maintenance, 90-6-205.

**60-3-201. Distribution and use of proceeds of gasoline dealers' license tax.** (1) All money received in payment of license taxes under the Distributor's Gasoline License Tax Act, except those amounts paid out of the department of transportation's suspense account for gasoline tax refund, must be used and expended as provided in this section. The portion of that money on hand at any time that is needed to pay highway bonds and interest on highway bonds when due and to accumulate and maintain a reserve for payment of highway bonds and interest, as provided in laws and in resolutions of the state board of examiners authorizing the bonds, must be deposited in the highway bond account in the debt service fund established by 17-2-102. Subject to that provision:

(a) 9/10 of 1% of all money must be deposited in the state park account;

(b) 1/2 of 1% of all money must be deposited in a snowmobile account in the state special revenue fund;

(c) 1/8 of 1% of all money must be deposited in an off-highway vehicle account in the state special revenue fund; and

(d) 1/25 of 1% of all money must be deposited in the aeronautics revenue fund of the department of transportation under the provisions of 67-1-301.

(e) The remainder of the money must be used:

(i) by the department of transportation on the federal-aid highways in this state selected and designated under Title 23, U.S.C., on highways leading from each county seat in the state to the federal highway system of federal-aid roads if the county seat is not on the system, and on the other roads that have been or may be authorized by the laws of Montana;

(ii) for collection of the license taxes; and

(iii) for the enforcement of the Montana highway code under Article VIII, section 6, of the constitution of this state.

(2) The department shall, in expending this money, carry forward construction from year to year, using the money expended through the matching up of federal-aid allotments to Montana upon the federal highway system in the various parts of the state in accordance with 60-3-204 through 60-3-206. Nothing in this title conflicts with Title 23, U.S.C., and the rules by which it is administered.

(3) The department may enter into cooperative agreements with the national park service and the federal highway administration for the purpose of maintaining national park approach roads in Montana.

(4) Money credited to the state park account in the state special revenue fund may be used only for the creation, improvement, and maintenance of

state parks where motorbikes are sold under 15-70-221 through 15-70-223. The amount of money sold in the state for consumption of snowmobile fuel tax under 9/10 of 1% is used for promotion of off-highway vehicles.

(5) Money credited to the state special revenue fund and maintain facilities open to the general public to promote snowmobile safety. The snowmobile account must be used if the legislature finds that of all fuels sold in this state for use in engines, not less than 1/2 of the proceeds of the sale of lands of this state.

(6) (a) Money credited to the state special revenue fund (1)(c) may be used to promote off-highway vehicles, and to maintain facilities open to the general public at no additional cost to the state. The portion of the money deposited in the state special revenue fund to promote off-highway vehicles must be used to promote off-highway vehicle accounts in the state special revenue fund for off-highway vehicles.

(b) The legislature finds that the use of money in internal combustion engines for off-highway vehicles in this state is necessary for the promotion of off-highway vehicles in this state.

(7) Money credited to the state special revenue fund for transportation may be used to promote off-highway vehicles open to the public at no additional cost to the state. The legislature finds that of all fuels sold in this state for use in internal combustion engines for aircraft in this state.

**History:** En. Sec. 4-301, Ch. 356, L. 1971; amd. Sec. 1, Ch. 477, L. 1975; amd. Sec. 10, Ch. 23, L. 1979; amd. Sec. 1, Ch. 558, L. 1985.

## Compiler's Comments

**1991 Amendments:** Chapter 1991-101, first sentence before "suspense account for gasoline tax refund", substituted "department of transportation's" for "department of transportation's"; "department of transportation's" and in second sentence "The portion" for "so much of the money"; substituted "department of transportation" for "department of transportation"; "department of commerce"; substituted "department of transportation" for "department of highways"; former second sentence that "the amount of money deposited in the snowmobile account in the state special revenue fund each year shall be used to promote off-highway vehicle safety"; in (7) substituted "department of transportation" for "department of transportation".

**60-3-202. Funding** the increased

state parks where motorboating is allowed, except for the payment of refunds under 15-70-221 through 15-70-226. The legislature finds that of all the fuel sold in the state for consumption in internal combustion engines, not less than 9/10 of 1% is used for propelling boats on waterways of this state.

(5) Money credited to the snowmobile account may be used only to develop and maintain facilities open to the general public at no admission cost and to promote snowmobile safety, and 10% of the amount deposited in the snowmobile account must be used to promote snowmobile safety. The legislature finds that of all fuels sold in this state for consumption in internal combustion engines, not less than 1/2 of 1% is used for propelling snowmobiles on public lands of this state.

(6) (a) Money credited to the off-highway vehicle account under subsection (1)(c) may be used only to develop and maintain facilities open to the general public at no admission cost, to repair areas that are damaged by off-highway vehicles, and to promote off-highway vehicle safety. Ten percent of the money deposited in the off-highway vehicle account must be used to promote off-highway vehicle safety. Up to 10% of the money deposited in the off-highway vehicle account may be used to repair areas that are damaged by off-highway vehicles.

(b) The legislature finds that of all fuel sold in this state for consumption in internal combustion engines, not less than 1/8 of 1% is used for propelling off-highway vehicles in this state.

(7) Money credited to the aeronautics account of the department of transportation may be used only to develop, improve, and maintain facilities open to the public at no admission cost and to promote aviation safety. The legislature finds that of all the fuel sold in this state for consumption in internal combustion engines, not less than 1/25 of 1% is used for propelling aircraft in this state.

History: En. Sec. 4-301, Ch. 197, L. 1965; amd. Sec. 1, Ch. 251, L. 1967; amd. Sec. 6, Ch. 356, L. 1971; amd. Sec. 13, Ch. 100, L. 1973; amd. Sec. 94, Ch. 316, L. 1974; amd. Sec. 8, Ch. 477, L. 1975; amd. Sec. 1, Ch. 372, and Sec. 1, Ch. 382, L. 1977; R.C.M. 1947, 32-2601; amd. Sec. 10, Ch. 23, L. 1979; amd. Sec. 1, Ch. 607, L. 1979; amd. Sec. 26, Ch. 298, L. 1983; amd. Sec. 1, Ch. 558, L. 1985; amd. Sec. 10, Ch. 512, L. 1991; amd. Sec. 1, Ch. 698, L. 1991.

**Compiler's Comments**

1991 Amendments: Chapter 512 in (1), in first sentence before "suspense account for gasoline tax refund", substituted "department of transportation's" for "department of revenue's" and in second sentence substituted "The portion" for "so much"; in (1)(d) substituted "department of transportation" for "department of commerce"; in (1)(e)(i) substituted "department of transportation" for "department of highways"; in (5) deleted former second sentence that read: "For the 2 years following July 1, 1977, 15% of the amount deposited in the snowmobile account each year shall be used to promote snowmobile safety"; in (7) substituted "department of transportation" for "department of commerce";

and made minor changes in style. Amendment effective July 1, 1991.

Chapter 698 inserted (1)(c) requiring deposit of 1/8 of 1% of license tax proceeds in an off-highway vehicle account; in (5) deleted former second sentence that read: "For the 2 years following July 1, 1977, 15% of the amount deposited in the snowmobile account each year shall be used to promote snowmobile safety"; inserted (6) specifying allowable uses for money credited to the off-highway vehicle account; and made minor changes in style. Amendment effective July 1, 1991.

**Cross-References**

Distributor's Gasoline License Tax Act, Title 15, ch. 70, part 2.

**60-3-202. Funding highway system maintenance.** For the purpose of funding the increased cost of maintaining the state highway system as

## APPENDIX 15



## STATE-OWNED RESERVOIRS

NAME	DRAINAGE	COMPLETED	SIZE (ACRES)	SPORT FISH	FISHERY STATUS
1. Ackley L.	Judith	1938	240	Rb	Stocked annually with wild, Eagle Lake and domesticated Arlee rainbow. FWP purchases water for minimum pool, allowing stable sport fishery popular with anglers
2. Bair Res. N.F. Musselshell		1939	272	YS Ct	Trout growth and fishery good when lake levels maintained; went dry in 1988 and in a few other years in 1980s
3. Cooney Res.	Red Lodge Cr.	1936	640	Rb, WE	Annually stocked with 100,000 4-6 in. Rb. WE introduced to prey on large sucker pop. WE not doing well. Significant annual drawdowns detrimental to game fish pops. Flow releases have not benefitted fisheries in Red Lodge or Rock creeks.
4. Cottonwood	Shields	1953		Ct	FWP may plant Ct when adequate water levels are maintained; Reservoir sporadically drained for irrigation. Good fishery can develop when drawdowns not excessive.
5. Deadman's Basin Res.	Musselshell	1941	2,000	Kok Rb, LL	Off-stream storage from Musselshell River diversion. Annual hatchery plants. Poor fishery during 1980s due to low water levels. Practically dry in 1988. Severe annual drawdowns

(25-35 ft.) cause instable fishery. Good public access but popularity has declined due to poor fishery success.

6. Frenchman Frenchman Cr. 1952 806 WE  
Cr. Res. (Phillips Co.)  
History of sporadic walleye populations. Severe annual drawdowns. FWP no longer manages site due to drawdowns and frequently near-dry reservoir.

7. Martinsdale S.F. Musselshell 1939 1,000 Rb,Ct  
Res. IL  
Annual plants of Rb, Ct. Plagued by severe drawdowns (37 ft in 1988). Good fishery with adequate water levels.

8. Middle Cr. Hyalite Cr. 1951 208 Ct,Gr  
(Hyalite) Res.  
Good sport fishery for Ct, and trophy-size grayling. Extreme drawdowns (up to 36 ft). No specific Bozeman Water Supply effects on fishery available. Dam and reserv. to be expanded, with provisions for minimum pool and downstream releases for fisheries.

9. Nevada Cr. Nevada Cr. 1938 100 Ct  
Res.  
Reputation as poor fishery. Stocking discontinued due to severe drawdowns. Dry in 1988 and in some other years. FWP not managing fishery.

10. Nilan Res. Sun River 1951 Rb  
Annually stocked with 25,000 4-6 in. rainbow. Reputation as good fishery for its size. Limited access. Drawdown varies but fishery would benefit if extremes moderated.

11. N.F. Smith      N.F. Smith      1936      327  
Res.      Poor fishery. Limited fishing due to extreme drawdowns. Trout salvaged in 1988. Not managed by FWP since 1988.
12. Painted Rocks      West Fork Bitterroot      1940      ct  
Res.      Hatchery plants discontinued in 1988. Only limited fishery. Several annual drawdowns. FWP purchases 10,000 AF for release into Bitterroot River for fishery improvement.
13. Petrolia Res.      Flatwillow Creek      1951      NP, YP  
WE      Coolwater fishery, self-sustaining except for WE. Only fair sport fishing. Limited by annual drawdowns. Reservoir completely drained in recent years.
14. Tongue River Reservoir      Tongue River      1936      3,500  
WCR, BCR, C Cat, NP, SMB  
Warmwater fishery. Excellent fisheries for CR, WE & SMB. Low fall/winter levels due to dam safety hazard. Increasing angler use. Low pool levels have adversely affected fisheries. Dam rehabilitation and increase in capacity on drawing board. Lack of spring high flow releases have adversely affected sauger spawning into lower Tongue River.
15. Willow Creek Res. (Harrison)      Willow Creek Res. (Madison Co.)      1938      868  
Rb, LL  
Reservoir supports wild, self-sustaining RB and LL populations. Brood lake for Desmet Rb. Reservoir drawdown typically 10-12 feet. Popular and locally important summer

and winter fishery. Reservoir management changes could improve fishery.

Fishery has been sustained with 30,000 4-6 inch Rb planted annually. Good fishery when water levels are adequate. Low levels prevent stable fishery from developing. Recent low levels have caused reduction in fish planted.

16. Yellow Water Yellow Water Cr.1939  
Res. (Petroleum Co.)

150 Rb

Rb = Rainbow Trout  
YS Ct = Yellowstone Cutthroat  
WE = Walleye  
Kok = Kokanee  
LL = Brown Trout  
Ct = Cutthroat (undesigated)  
Gr = Grayling

NP = Northern Pike  
YP = Yellow Perch  
WCR = White Crappie  
BCR = Black Crappie  
C Cat = Channel Catfish  
SMB = Small Mouth Bass

5173



## ACKLEY LAKE

Ackley Lake is an offstream storage reservoir that is fed by a five-mile-long canal from the Judith River. This 240-acre irrigation facility, located in Judith Basin County, is formed by a 41-foot-high earthfill dam completed in 1938. Open farm land dominates the surrounding terrain.

The fishery of Ackley Lake is sustained by annual plants of two strains of rainbow trout; the wild, long-lived Eagle Lake strain and the domesticated Arlee strain. The MDFWP purchases stored water from the Ackley Lake water users association to maintain a minimum recreational pool, thus allowing a stable sport fishery to develop. Because of this stability, the reservoir has a reputation as a good fishery and is popular with anglers.

Suckers thrive in Ackley Lake. In the past, programs to reduce sucker numbers have been periodically undertaken by the MDFWP, improving the growth and survival of the trout plants for a few years following each control effort.

## BAIR (DURAND) RESERVOIR

Bair Reservoir is a 272-acre irrigation storage impoundment located in open rangeland in Meagher County. An earthfill dam built on the North Fork of the Musselshell River in 1939 forms this impoundment.

The trout fishery of Bair Reservoir is maintained by annual plants of hatchery fish. When adequate water levels can be maintained for a few consecutive years, trout growth is good and a sport fishery can be provided. During the drought of 1988, the reservoir was completely dry and was nearly so in a number of years in the early 1980s.

Yellowstone cutthroat trout were planted in the reservoir in the spring of 1989. The cutthroat are growing well and currently providing good fishing for pan-size trout, making Bair Reservoir one of the better reservoir sport fisheries in the White Sulphur Springs area.

## COONEY RESERVOIR

A 97-foot-high earthfill dam on Red Lodge Creek in Carbon County forms Cooney Reservoir, built in 1936. Open rangeland surrounds the 640-acre irrigation storage impoundment.

The trout fishery of Cooney Reservoir is sustained by annual hatchery plants of approximately 100,000 4-6 inch rainbow trout. Low numbers of brown trout that drift down from the reservoir's tributaries also contribute to the fishery. The reservoir receives from 20,000-35,000 angler-days of pressure annually, making it one of the more popular fishing waters in the Billings area.

In an attempt to control an increasing sucker population that was believed responsible for the declining growth rates of stocked trout in Cooney Reservoir, the MDFWP began, in 1984, an experimental walleye stocking program. The introduced walleye appear to have severely reduced the number of smaller suckers, thus acting as an effective control. The walleye, while growing well, don't appear to be reproducing and, consequently, their numbers must be maintained by hatchery plants, currently at one million sac fry annually. Despite the annual stocking, only a mediocre population density has developed to date.

An unauthorized introduction of an additional fish predator, the crappie, recently occurred in the reservoir. How this species, which is successfully reproducing, will affect the existing

fisheries is unknown. Added competition for the reservoir's limited food base could reduce growth of both trout and walleye as well as stunt the crappie population. If such a scenario occurs, a costly rehabilitation project may be necessary.

By the end of the irrigation season in late summer, the reservoir drawdown can be significant. During the decade of the 1980s, drawdowns of up to 27 vertical feet were recorded. This excludes the complete dewatering of the reservoir in 1982. These water level fluctuations have been detrimental to the maintenance of gamefish populations.

Stored water is released into Red Lodge Creek where it flows for 12 miles before entering lower Rock Creek at stream mile 16. The water is then diverted from Rock Creek to irrigate adjacent fields. Fluctuating dam releases have likely contributed to the poor fishery that characterizes Red Lodge Creek below Cooney Reservoir. Despite the augmentation of summer flows with stored water, portions of the lower Rock Creek channel are often dry due to the magnitude of the irrigation withdrawals. There's no evidence suggesting that flow releases have benefitted the downstream fisheries of Red Lodge and Rock creeks.

## COTTONWOOD RESERVOIR

Cottonwood Reservoir is a small irrigation storage impoundment located in open rangeland along Cottonwood Creek, a tributary to the Shields River in Park County. The 56-foot-high earthfill dam was completed in 1953.

The reservoir is sporadically drained for irrigation, thus limiting fishing and other recreational opportunities. No recreational facilities have been developed on the reservoir.

Cottonwood Reservoir supports a few cutthroat trout along with a prolific sucker population. When excessive drawdowns are avoided for an extended period of three years or so, trout growth is said to be excellent and anglers report catching a few larger-size cutthroat. In the past, the MDFWP has chosen not to manage the reservoir as a sport fishery due to the severe water level fluctuations that characterize this state-owned project. The current plan is to annually stock the reservoir with 10,000 - 15,000 cutthroat fry in an attempt to establish a viable sport fishery during those periods when adequate water levels are maintained.

## DEADMAN'S BASIN RESERVOIR

Deadman's Basin is an offstream, irrigation storage reservoir located in an open, natural basin that was dammed in 1941. At full pool, the reservoir is about 2,000 acres, with maximum depth of 70 feet. Stored water is diverted from the Musselshell River via a canal. The canal can divert the entire flow of the Musselshell, particularly in fall at the end of the irrigation season, leaving a mere trickle of flow in the channel. The trout fishery of the Musselshell River ends at the Deadman's Basin diversion structure.

Stored water is used to augment flows of the Musselshell River during the summer irrigation season. Water returns to the river via a canal that enters at Ryegate and another canal that enters Careless Creek, a river tributary. The artificially high flows in Careless Creek are eroding the streambanks and contributing a considerable amount of sediment to the river, thus qualifying Careless Creek as a severe non-point source pollution problem.

The fishery of Deadman's Basin is sustained by annual hatchery plants. In recent years, the MDFWP has been stocking a combination of kokanee salmon and wild, long-lived rainbow trout strains in an attempt to stabilize the reservoir sport fishery, which has generally been poor during the decade of the 1980s, a period of extended drought. Small numbers of brown trout, which enter from the Musselshell River each year, also inhabit the reservoir and occasionally reach lunker size. The winter ice fishing is limited

by unstable ice conditions caused by rising water levels and the severe winds that plague the area.

Public access to the reservoir is excellent and angler use is relatively high. Fishing pressure has declined to about 12,000 man-days annually and reflects the relatively poor fishing success experienced in recent years.

Reservoir drawdowns, particularly in drought years, are severe, ranging from about 25-35 feet annually. During the drought of 1988, the reservoir was reduced to dead storage and the outlet bulldozed to further reduce water levels. The severity of the annual drawdowns is the leading cause of the instability of the reservoir sport fishery.

## FRENCHMAN CREEK RESERVOIR

Frenchman Creek Reservoir, located on Frenchman Creek in Phillips County, was built in 1952 for irrigation. This heavily silted impoundment has, at full pool, an area of 806 acres and maximum depths of 15-18 feet.

Severe annual drawdowns characterize Frenchman Creek Reservoir. In the early 1980s, the reservoir was nearly dry. In the past, the reservoir sporadically supported a fishable walleye population. Now, minnows and rough fish dominate the fish community. The MDFWP no longer attempts to manage the reservoir for game fish due to the severe water level fluctuations that plague this state project.



## MARTINSDALE RESERVOIR

Martinsdale Reservoir is an offstream irrigation storage facility located in open rangeland in Wheatland County. Stored water is diverted from the South Fork of the Musselshell River. Two earthfill dams, completed in 1939, form the reservoir. The reservoir has an area of about 1,000 acres, a maximum depth of 120 feet, and a maximum capacity of 23,100 acre-feet.

The reservoir supports rainbow and cutthroat trout, which are maintained by annual hatchery plants, and a few brown trout, some reaching lunger-size, which enter from the South Fork of the Musselshell River. This is another reservoir that is plagued by severe drawdowns. During the 1988 drought, the drawdown was 37 vertical feet and the reservoir pool reduced from 8,870 acre-feet to a mere 239 acre-feet.

The sport fishery of Martinsdale Reservoir can be good when adequate water levels are maintained in consecutive years. When fishing is good, the reservoir is popular with anglers, supporting about 10,000 man-days of pressure annually.

## MIDDLE CREEK (HYALITE) RESERVOIR

Middle Creek Reservoir is located in the Gallatin National Forest at the headwaters of Hyalite (Middle) Creek in the Gallatin Mountain Range of southwest Montana. The dam, completed in 1951, impounds a 208-acre (at maximum capacity) storage reservoir, having a maximum depth of 90 feet. Stored water is used for irrigation and by the city of Bozeman for its municipal water supply.

The reservoir is typically filled to capacity in early summer and then drawn down through the fall, with water maintained at low levels from October until the onset of spring runoff. Water drawdowns are extreme, with annual fluctuations of up to 36 vertical feet or more. No specific information or drawdown effects on the fishery are available.

Middle Creek Reservoir supports a good sport fishery for both cutthroat trout and trophy-size arctic grayling. A 2 lb, 10 ounce grayling was caught in 1986, establishing a new Montana record. The grayling population is entirely self-sustaining, reproducing in the reservoir's tributaries.

The MDFWP's management objective for cutthroat trout is to maintain a high quality sport fishery that allows for a reasonable harvest. Consequently, annual hatchery plants of about 20,000 cutthroat fry are needed to augment natural levels of reproduction.

The close proximity to Bozeman, ease of access, and extensive recreational developments make Middle Creek Reservoir and its sport fishery extremely popular with local recreationists. Fishermen use is substantial, annually averaging about 5,000 - 7,000 man-days of pressure in recent years. Paving of the Middle Creek Reservoir access road in 1988 is expected to greatly increase angler use in future years.

Downstream from Middle Creek Dam, Hyalite Creek flows for 29 miles before entering the East Gallatin River. There's no evidence suggesting that the reservoir has harmed or benefitted the downstream trout fishery. Portions of the lower creek still go dry in virtually all years during the irrigation season, an event that also likely occurred long before the dam was constructed. Within the forest upstream from the irrigation diversions, Hyalite Creek is a locally important stream fishery, supporting a good population of wild rainbow trout.

A project to increase the reservoir's storage capacity by raising the dam an additional 10 feet will begin in 1990. The enlarged pool will flood almost all of the tributary spawning habitat for arctic grayling and a good chunk of the spawning habitat for cutthroat trout. Whether or not spawning losses can be replaced is unknown at this time. This project has the potential to eliminate the self-sustaining grayling population from the reservoir.

This new project will require a special use permit from the

U.S. Forest Service. Permit requirements are slated to include a minimum pool to protect the fish and recreational values of Middle Creek Reservoir and a minimum flow release to protect the downstream fishery of Hyalite Creek. No protection is currently mandated.

## NEVADA CREEK RESERVOIR

Nevada Creek Reservoir is a narrow, 100-acre impoundment on Nevada Creek, a tributary to the Blackfoot River in Powell County. An 83-foot-high earthfill dam completed in 1938 forms this irrigation reservoir.

Up until the mid-1980s, the MDFWP annually planted the reservoir with trout. Even then, the reservoir had a reputation as a poor fishery. Stocking was discontinued because of the severe drawdowns that plagued this body of water. In recent years, the reservoir has been nearly dry by late summer and, during the 1988 drought, no storage remained.

The reservoir is currently populated with an abundance of suckers and a few cutthroat trout that enter from the tributaries. Should a "wet" weather cycle return to Montana in the future, the MDFWP will consider resuming a fish stocking program. It is currently not economically feasible to manage the fishery with hatchery trout.

## NILAN RESERVOIR

Nilan Reservoir is a small, offstream, irrigation storage facility formed by two earthfill dams completed in 1951. The reservoir, which lies in open rangeland, measures about 1 1/4 miles long by a third of a mile wide, with a maximum depth of about 50 feet. Stored water is diverted from Smith and Ford Creeks, tributaries to the Sun River in Lewis and Clark County.

The fishery of Nilan Reservoir is maintained by annual plants of 75,000 4-6 inch rainbow trout. The reservoir has a reputation as a good fishery for its size and receives considerable angler-use, estimated at about 4,400 man-days annually. Public access to the reservoir is provided, but is limited due to the small size of the access site. The reservoir has been rehabilitated a number of times in the past in an effort to reduce a thriving sucker population. This practice was discontinued in recent years due to the high cost of fish toxicants.

The annual reservoir drawdown varies and occasionally reaches critical levels. In general, water levels are sufficient to allow over-wintering of stocked fish. The fishery would benefit if the annual drawdown was reduced and the extremes were moderated.

## NORTH FORK SMITH RIVER (SUTHERLIN) RESERVOIR

An 86-foot-high earthfill dam on the North Fork Smith River forms North Fork Smith River Reservoir, a 327-acre irrigation storage impoundment completed in 1936. The reservoir, located in open grazing land within Meagher County, has a maximum depth of about 80 feet.

The severity of annual drawdowns -- as much as 60 vertical feet -- prevents a consistent sport fishery from developing in the reservoir. Attempts at stabilizing the trout fishery by planting long-lived, wild trout strains that are capable of reproducing in the reservoir's tributaries have failed and this is no longer considered a workable option by MDFWP. During the 1988 drought, the shrinking reservoir pool forced the MDFWP to remove all gamefish limits to allow fishermen to harvest the doomed population. Sport fish were also trapped and transferred to a reservoir having a better water level. Since the 1988 dewatering, the MDFWP has not attempted to redevelop a sport fishery using planted trout. Currently the reservoir fishery is of little consequence and offers limited fishing opportunities.

## PAINTED ROCKS RESERVOIR

A 143-foot-high dam in a scenic, heavily timbered canyon along the West Fork of the Bitterroot River in Ravalli County forms Painted Rocks Reservoir. Completed in 1940, the reservoir is about 4 miles long by 1/2 mile wide, storing about 32,000 acre-feet of water at full pool.

Annual plants of fish sustained a limited trout fishery in Painted Rocks Reservoir until 1984 when the MDFWP discontinued the stocking program. Severe annual drawdowns, which created a nearly dry pool by freeze-up in virtually all years, prevented a stable sport fishery from developing. In 1984 the MDFWP also began to annually purchase 10,000 acre-feet of stored water to be released in summer to maintain minimum instream flows in the Bitterroot River, thus protecting the river's wild trout fishery. This 10,000 acre-feet purchase is in addition to the 5,000 acre-feet that the MDFWP owns in perpetuity and also annually releases to benefit instream values. At present, stored water controlled by the MDFWP best serves the needs of the downstream fishery of the Bitterroot River.

A few cutthroat trout that enter from the tributaries sustain a poor sport fishery in the reservoir. Should a "wet" weather cycle return to Montana in the future, the MDFWP will consider stocking the reservoir with hatchery trout.



## PETROLIA RESERVOIR

Located on Flatwillow Creek in Petroleum County, Petrolia Reservoir was created by a 55-foot-high dam completed in 1951. The 510-acre irrigation storage reservoir has a maximum depth of about 50 feet.

Petrolia Reservoir supports a coolwater fishery comprised of northern pike and yellow perch, which are self-sustaining, reproducing populations, and walleye, whose numbers are maintained by periodic hatchery plants. The magnitude of the annual drawdowns limits the quality of the sport fishery, which is only rated as fair in the better water years. The reservoir has been completely drained in recent years and, during the 1988 drought, only about 5 surface acres remained. The reservoir also lacks a consistent forage base to sustain the many predator species that provide the fishery. This is likely another impact related to the severity of the annual drawdowns.

## RUBY RIVER RESERVOIR

Ruby River Reservoir, built in 1938, is located on the Ruby River in Madison County at river mile 48. This 1,000-acre irrigation storage reservoir is formed by an 111-foot-high earthfill dam. Open pastureland dominates much of the surrounding terrain.

Ruby Reservoir supports rainbow and brown trout, mountain whitefish and a few cutthroat and brook trout. The reservoir stocking program has varied over the years. The MDFWP is currently planting wild trout stocks in an attempt to build rainbow trout numbers.

The reservoir sport fishery is presently rated as poor and receives limited angler use, estimated at approximately 2,500 man-days annually. In past years, fishing has been fairly good and wild rainbow trout have flourished. The instability of the fishery is believed to be related to the severity of the summer drawdowns, which typically exceed 50 vertical feet annually and reduce the reservoir pool by 75% or more. During the 1988 drought, the reservoir pool was nearly drained, from 39,840 to 1,500 acre-feet, a reduction of 96%. In 1980, an approximate 98% reduction was estimated. The fishery cannot be expected to continually prosper with these extreme fluctuations. Vast expanses of mud flats are also created by the summer drawdowns, causing access problems for bank fishermen and boaters.

## TONGUE RIVER RESERVOIR

Located in open rangeland in Big Horn County, the 3,500-acre Tongue River Reservoir is formed by a 91-foot-high dam, built in 1936, on the Tongue River. Average water depth is about 10 feet, while maximum depths reach about 60 feet. The project supplies water to local coal companies, a number of small towns and several thousand acres of irrigated land.

Tongue River Reservoir supports an array of warmwater sport fish consisting of both black and white crappie, walleye, smallmouth bass, channel catfish, and some northern pike. Populations of crappie, smallmouth bass and channel catfish are self-sustaining. Because reproductive habitat for walleye is limited, periodic plants are needed to provide a walleye fishery. Pike numbers are solely maintained by stocking.

The sport fisheries for crappie, walleye and smallmouth bass are rated as excellent. The crappie fishing is of particular note, with the reservoir producing an abundance of fish in the one-half pound class and some reaching 1 1/4 pounds. The reservoir's growing reputation as an excellent fishery has increased fishing pressure to an estimated 20,000 angler-days annually.

Less than desirable fall-winter pool levels have adversely affected reservoir fish populations in the past. These lower than desirable drawdowns are in part due to the unsafe nature of the

current dam spillway. A project to rehabilitate the spillway and increase the reservoir's storage level by four feet is being pursued by DNRC.

Reservoir operations over the past decade have adversely impacted the Yellowstone River sauger population, a portion of which enters the lower 20 miles of the Tongue River each spring to spawn. Dam releases in April and early May are insufficient to trigger the annual sauger migration into the river, and have thus lead to a series of reproductive failures. Shovelnose sturgeon, another species that enters the Tongue River each spring to spawn, have been similarly affected by the inadequacy of the spring flow releases at the dam.

In July 1989, DFWP submitted to DNRC a proposed plan of operation of the reservoir to improve spring flow conditions in the Tongue River. No response has been received as of June 1990.

## WILLOW CREEK (HARRISON) RESERVOIR

Willow Creek Dam, built in 1938 on Willow Creek, a tributary to the Jefferson River in Madison County, impounds an irrigation storage reservoir having an area of 868 acres at full pool. The surrounding terrain is dominated by open, rolling hills used primarily for the grazing of livestock. Drainage area above the reservoir is 153 mi<sup>2</sup>.

Stored water is released into Willow Creek where it is diverted for downstream irrigation. By the end of the irrigation season in early September, the reservoir drawdown is typically 10-12 ft. Additional water is also released, bringing the total drawdown to about 20 feet by fall. This added release provides the needed storage space to allow the stoppage of all flow releases in winter, a controversial practice that is said to reduce icing problems along the 11.5 miles of Willow Creek below the dam. Seepage from the dam provides about 1 cfs of flow in winter. The reservoir commonly fills in February, after which all incoming flows, including the high flows of spring runoff, are spilled at the dam.

Willow Creek Reservoir supports wild, self-sustaining populations of rainbow and brown trout, which maintain their numbers by reproducing in the reservoir's tributaries. The reservoir serves as the brood lake for the Harrison Reservoir-DeSmet stock of rainbow trout, a wild, long-lived strain being used

in the MDFWP's wild trout planting program for area lakes and reservoirs. In spring, when rainbows enter the reservoir's tributaries to spawn, spawners are collected at the MDFWP's fish trap on Willow Creek upstream from the reservoir. Eggs are stripped, fertilized, then taken to the state hatchery at Anaconda where they are hatched and the young raised for release into other state waters where the MDFWP is striving to build wild trout stocks. In 1990, 1.4 million eggs were collected from the reservoir's spawning run.

The reservoir provides a popular and locally important sport fishery in winter and summer for rainbow trout in the 2- to 2 1/2-pound class. About 7,800 man-days of angler use occurs annually. Public access to the reservoir is provided at a fishing access site owned by the MDFWP.

The 11.5 miles of Willow Creek below the reservoir is noted for its rainbow trout fishery. However, many of the trout are believed to be drifters from the reservoir, entering the creek with the high runoff flows that are spilled in spring. Access to this stretch of Willow Creek is controlled by private landowners.

Changes in water management would benefit the fisheries in the reservoir and in Willow Creek below the reservoir. These changes include:

1. manage the annual reservoir drawdown to meet only the needs of irrigation and not for alternating winter icing;

2. provide a minimum flow release in winter for the benefit of the downstream fishery in Willow Creek; and
3. fill the reservoir by spring, taking advantage of the high runoff flows.

## YELLOW WATER RESERVOIR

Yellow Water Reservoir is located in open rangeland behind a 37-foot-high earth dam on Yellow Water Creek within the Musselshell River drainage in Petroleum County. This irrigation reservoir, built in 1939, has a maximum surface area of about 150 acres.

The sport fishery of Yellow Water Reservoir has been sustained for more than 20 years with annual plants of about 30,000 4-6 inch rainbow trout. It is a productive reservoir having excellent growth rates when sufficient water is present to allow stocked trout to over-winter. Irrigation withdrawals often result in low water levels which prevent a stable sport fishery from developing.

The reservoir was drained in the mid-1980s so that repairs could be made on the dam. No fish plants were made from 1985-87 due to low water levels. Low water in 1989 caused the fish plant to be reduced to 5,000 fish. In the future, the MDFWP plans to stock larger trout (10,000 7-9 inches) in an attempt to help stabilize the fishing, particularly in low water years. At present, the number of fish in the reservoir is low, but the average size is fairly large.



## APPENDIX 16



- (iii) any portage over and around barriers; or
- (b) the entering or crossing of private property to reach surface waters.

History: En. Sec. 5, Ch. 556, L. 1985.

Cross-References  
Title by prescription, 70-19-405.

## Part 4

### Management of Smith River

Aquatic ecosystem protections, Title 75,

Part Cross-References ch. 7,  
Water rights, Art. IX, sec. 3, Mont. Const. Surface water and ground water, Title 85,

Stream access, Title 23, ch. 2, part 3.

Gratuities permittee for recreation, Title ch. 2,  
70, ch. 16, part 3. Stream protection, Title 87, ch. 5, part 5.

**23-2-401. Short title.** This part may be cited as the "Smith River

Management Act".

History: En. Sec. 1, Ch. 512, L. 1989.

**23-2-402. Purpose — intent.** (1) The purpose of this part is to:

- (a) provide continued recreational and commercial use and enjoyment of the Smith River waterway, consistent with the river's capacity;
- (b) seek ways to minimize conflicts between river users and private landowners; and
- (c) protect the integrity of the river's water and canyon resources for future generations.

(2) The intent of this part is to interpret and implement this part in a manner consistent with the statement of purpose for the state park system in 23-1-101.

(3) Nothing in this part may be construed in any way to restrict a landowner's access to or use of his land, improvements, water rights, or adjacent waterways.

History: En. Sec. 2, Ch. 512, L. 1989.

**23-2-403. Definitions.** As used in this part, the following definitions

apply:

(1) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

(2) "Department" means the department of fish, wildlife, and parks provided for in 2-15-3401.

History: En. Sec. 3, Ch. 512, L. 1989; nmd. Sec. 2, Ch. 28, L. 1991.

Compiler's Comments

1991 Name Change: Section 2, Ch. 28, L. mission wherever the name appears in the MCA. Accordingly, the name was changed in this section as directed.

1991, directed the Code Commissioner to change the name of the Fish and Game Commission to the Fish, Wildlife, and Parks Com-

**23-2-404. Applicability.** This part applies to that portion of the Smith River waterway located in Meagher and Cascade Counties lying between the Camp Baker state fishing access site in Meagher County and the confluence of the Smith River with the Missouri River. This description does not prevent the department from naming or renaming areas pursuant to 23-1-102.

History: En. Sec. 1, Ch. 512, L. 1989.

**23-2-405 and 23-2-406 reserved.**

**23-2-407. Management responsibility and plan.** The department has the primary recreational management responsibility for the Smith River waterway described in 23-2-404, consistent with the purpose stated in 23-1-101 and 23-2-402. The Smith River waterway must be administered to:

- (1) allow the continuation of compatible existing recreational and public land uses;
- (2) maintain the opportunity to enjoy the natural scenic beauty and solitude; and
- (3) conserve fish and wildlife and scientific and recreational values.

History: En. Sec. 5, Ch. 512, L. 1989.

**23-2-408. Rulemaking authority.** The commission has authority to provide for the administration of the Smith River waterway. The commission may adopt rules to:

- (1) regulate and allocate recreational and commercial floating and camping to preserve the biological and social benefits of recreational and commercial use of the Smith River waterway in its natural state. Recreational use may be restricted to preserve the experience of floating, fishing, and camping in a natural environment and to protect the river's fish, wildlife, water, and canyon resources. The restrictions must:
- (a) consider the tolerance of adjacent landowners to recreational use;
- (b) consider the capability of the river and adjoining lands to accommodate floating and camping use; and
- (c) ensure an acceptable level of user satisfaction, including minimizing user conflicts and providing for a level of solitude.
- (2) restrict recreational use, if necessary, through the implementation of a permit system. An allocation of a portion of the permits may be made to licensed outfitters to preserve the availability of outfitting services to the public.
- (3) regulate the activities of recreational and commercial users of the water and land in the Smith River waterway that are legally accessible to the public and regulate the land in the river corridor that is under the control of the department and commission:

- (a) for the purposes of safety, health, and protection of property;
  - (b) to preserve the experience of floating, fishing, and camping in a natural environment;
  - (c) to protect the river's fish, wildlife, water, and canyon resources; and
  - (d) to minimize conflicts between recreationists and private landowners.
- (4) establish recreational and commercial user fees for floating and camping on the Smith River waterway.
- History: En. Sec. 6, Ch. 512, L. 1989.

**23-2-409. Allocation of user fees.** All money collected as recreational and commercial user fees for floating and camping on the Smith River waterway pursuant to 23-2-408 must be deposited in the state treasury in a state revenue fund to the credit of the department.

History: En. Sec. 7, Ch. 512, L. 1989.

(2) The department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-4-301. Authorized officers of the department are granted peace officer status with the power:

- (a) of search, seizure, and arrest;
- (b) to investigate activities in this state regulated by this part and rules of the department and the commission; and
- (c) to report violations to the county attorney of the county in which they occur.

**History:** En. Sec. 8, Ch. 512, L. 1989; amd. Sec. 5, Ch. 662, L. 1991.

**Compiler's Comments**  
 1991 Amendment: Inserted (2) providing with enumerated powers. Amendment effective April 26, 1991.  
 that Department is a criminal justice agency and its authorized officers are peace officers

**Part 5**

**Boats**

**23-2-501. Declaration of policy.** It is the policy of this state to promote safety for persons and property in and connected with the use, operation, and equipment of vessels and to promote uniformity of laws relating thereto.  
**History:** En. Sec. 1, Ch. 285, L. 1959; R.C.M. 1947, 69-3501.

**23-2-502. Definitions.** As used in this part, unless the context clearly requires a different meaning, the following definitions apply:

- (1) "Certificate of number" means the certificate issued annually by the county treasurer to the owner of a motorboat or by the department of justice to dealers or manufacturers, assigning such motorboat an identifying number and containing such information as required.
- (2) "Certificate of ownership" means a certificate issued by the department of justice identifying the owner of a motorboat or sailboat 12 feet in length or longer.
- (3) "Dealer" means any person who engages in whole or in part in the business of buying, selling, or exchanging new and unused vessels or used vessels, or both, either outright or on conditional sale, bailment, lease, chattel mortgage, or otherwise, and who has an established place of business for sale, trade, and display of vessels. A yacht broker is a dealer.
- (4) "Department" means the department of fish, wildlife, and parks of the state of Montana.
- (5) "Documented vessel" means a vessel which has and is required to have a valid marine document as a vessel of the United States.
- (6) "Identifying number" means the boat number set forth in the certificate of number and properly displayed on the motorboat.
- (7) "License decals" means the serially numbered license stickers issued annually by the county treasurer and displayed as required by law.
- (8) "Lienholder" means a person holding a security interest.

(9) "Manufacturer" means any person engaged in the business of manufacturing or importing new and unused vessels or new and unused outboard motors for the purpose of sale or trade.

(10) "Motorboat" means any vessel, including a canoe, kayak, personal watercraft, rubber raft, or pontoon, propelled by any machinery, motor, or engine of any description, whether or not such machinery, motor, or engine is the principal source of propulsion. The term includes boats temporarily equipped with detachable motors or engines but does not include a vessel which has a valid marine document issued by the U.S. coast guard of the United States government or any federal agency successor thereto.

(11) "Operate" means to navigate or otherwise use a motorboat or a vessel.

(12) "Operator" means the person who navigates, drives, or is otherwise in immediate control of a motorboat or vessel.

(13) "Owner" means a person, other than a lienholder, having the property in or title to a motorboat or vessel. The term includes a person entitled to the use or possession of a motorboat or vessel subject to an interest in another person, reserved or created by an agreement securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.

(14) "Passenger" means every person carried on board a vessel other than:

- (a) the owner or his representative;
- (b) the operator;
- (c) bona fide members of the crew engaged in the business of the vessel who have contributed no consideration for their carriage and who are paid for their services; or
- (d) any guest on board a vessel which is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for his carriage.

(15) "Person" means an individual, partnership, firm, corporation, association, or other entity.

(16) "Personal watercraft" means a vessel that uses an outboard motor or an inboard engine powering a water jet pump as its primary source of propulsion and that is designed to be operated by a person sitting, standing, or kneeling on the vessel rather than by the conventional method of sitting or standing in the vessel.

(17) "Security interest" means an interest that is reserved or created by an agreement that secures payment or performance of an obligation and is valid against third parties generally.

(18) "Uniform state waterway marking system" means one of two categories:

- (a) a system of aids to navigation to supplement the federal system of marking in state waters;
- (b) a system of regulatory markers to warn a vessel operator of dangers or to provide general information and directions.

(19) "Vessel" means every description of watercraft, unless otherwise defined by the department, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

(20) "Waters of this state" means any waters within the territorial limits of this state.



